

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
HILDA L. SOLIS, Secretary, 09-CV-2212
Of Labor, United States
Department of Labor,
:
Plaintiff, US Courthouse
-against- : Central Islip, NY

SCA RESTAURANT CORP., d/b/a
LUIGI Q ITALIAN RESTAURANT,
a Corporation, and
LUIGI QUARTA, individually
and as Owner,
Defendants.: April 9, 2012
9:30 a.m.
- - - - - X

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: US DEPARTMENT OF LABOR
Office of the Solicitor
201 Varick Street, Room 983
New York, New York 10014
BY: DANIEL HENNEFELD, ESQ.
ELENA S. GOLDSTEIN, ESQ.

For the Defendant: RAYMOND NARDO, ESQ.
129 Third Street
Mineola, New York 11501

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Transcript produced by computer.

Dominick M. Tursi, CM, CSR
Official US District Court Reporter

1 (Call to Order of the Court. Appearances states
2 as indicated above.)

3 THE COURT: As you know, we are here this
4 morning to begin the bench trial.

5 Are both sides ready to proceed?

6 MR. HENNEFELD: Yes, your Honor.

7 MR. NARDO: Yes, your Honor.

8 THE COURT: Both sides agree, pursuant to a
9 pre-trial order, that this is in fact a bench trial,
10 correct?

11 MR. HENNEFELD: Yes, your Honor.

12 MR. NARDO: Yes, your Honor.

13 THE COURT: Okay. There was one issue that came
14 up on Friday.

15 Mr. Nardo, we tried to contact your office but
16 it was a holiday and we were unable to reach you. I want
17 to address that before we get started.

18 I assume the government agrees we should address
19 that first.

20 MR. HENNEFELD: Yes, your Honor.

21 THE COURT: Okay. The court did issue a TRO
22 enjoining the defendants from terminating the two
23 employees who are the subject of the application prior to
24 the court having a chance to address this issue with the
25 parties in person today.

1 So Mr. Nardo, do you want to address that issue?

2 MR. NARDO: Yes, your Honor.

3 I spoke to my client about this and I would like
4 to address the papers, themselves, which I didn't see
5 until long after hours on Friday evening.

6 In the papers there's no declaration, there's no
7 affidavit from either of these employees. Miss Vasquez
8 wrote that Mr. Chavez says that Enrique, Jeff, said, and
9 that the court has said, these statements.

10 And I submit to you that there is no firsthand
11 evidence of this so far. And after discussing this with
12 my client, my client tells me that he simply asked these
13 employees if they were going to testify and, if so, he was
14 going to shut the restaurant down on Monday and that they
15 didn't have to come to work on Monday.

16 So there is no intent to terminate them, there's
17 no threat to terminate them, he's not terminating them and
18 he does not intend to terminate them. So I think this is
19 not really relevant to what we are doing today.

20 THE COURT: Okay. Well, a couple of things.

21 First of all, the court is permitted to rely on
22 hearsay for purposes of these types of applications.
23 Obviously, it was done very quickly and I was assuming
24 that if there was a dispute about this that needed to be
25 resolved by the court, obviously we could hear firsthand

1 what the conversations were.

2 But let me hear from the Department of Labor.
3 The termination issue might be moot in light of what was
4 just said.

5 MR. HENNEFELD: Your Honor, we believe the issue
6 is not moot because the two employees in question are here
7 to testify today and will be able to explain firsthand
8 what they were told and what the understanding was, that
9 it was a clear threat that they would be fired for
10 testifying.

11 And furthermore, we believe that the defendant
12 did not comply with the court's order subsequently, in
13 that further threats of discharge were made on Saturday to
14 these employees, the day after the court issued its order.

15 And just to note. We undertook and did
16 personally serve the order on the defendant shortly after
17 the court issued it on Friday afternoon, to make sure that
18 he was aware of it as quickly as possible. We're prepared
19 to provide your Honor a brief update on it, on what we
20 believe transpired. And of course the employees are here
21 today despite these threats to testify as to these facts.

22 THE COURT: What relief are you seeking with
23 respect to that?

24 Mr. Nardo I think is indicating that his client
25 understands -- first of all, is the restaurant in

1 operation today or is it not?

2 MR. NARDO: He indicated he was not going to
3 open on Monday. Then I spoke to him late in the day
4 Saturday. He'd said that he had some reservations; he
5 might open. So I'm not sure, judge.

6 THE COURT: But your client understands that if
7 he were to retaliate against any of these individuals by
8 firing them or in any other way, that it would be a
9 violation of the law. I'm sure you have explained that to
10 him.

11 MR. NARDO: That is correct, your Honor.

12 THE COURT: And what is his intention? If he
13 opens today, does he intend on letting those employees
14 continue to work or not?

15 MR. NARDO: Yes. Yes, he does. Well, not today
16 if they're here, but they're free to come back to work
17 after today.

18 THE COURT: Okay. So I guess, in light of that,
19 what remedy would you be seeking if you continue to
20 litigate this? If there is an agreement, at least through
21 his attorney, that they're not going to be terminated, if
22 the restaurant continues to operate that they're going to
23 continue the work there, what would you seek from me this
24 morning, is my question?

25 MR. HENNEFELD: Well, your Honor, first of all,

1 we're seeking permanent injunction for retaliation claimed
2 under Section 158.3. Based on the facts to be presented,
3 we seek to amend our complaint to add a claim under
4 Section 158.3 and appropriate relief thereto.

5 But given that, we believe the defendant
6 continued the retaliatory threats after the TRO was
7 issued. We believe consequently, further temporary relief
8 is needed until a permanent injunction can be adjudicated.

9 So we're requesting to convert the TRO into a
10 preliminary injunction until the permanent injunction can
11 be adjudicated, in order to stop the defendant from
12 continuing in this retaliatory conduct and threats.

13 THE COURT: Mr. Nardo?

14 MR. NARDO: Yes, judge. Let me just say
15 something at the outset.

16 When I came to this court -- I will stand, as
17 opposed to sit down, to speak into the mic. What do you
18 prefer?

19 THE COURT: That is fine.

20 MR. NARDO: Okay. I just didn't want you to
21 interpret that as a sign of disrespect.

22 First of all, I don't know what these other
23 allegations are. Mr. Hennefeld hasn't addressed them.

24 Second of all, amending this claim -- you know,
25 if they want to serve an amended complaint and we get time

1 to answer or make a motion, and we want to come back over
2 the summer, that is fine with us.

3 But I think we all want to get this resolved
4 here and now, judge. And I don't think an amended
5 complaint is necessary for this. And if there is, then
6 we're going to want time to answer and we're going to ask
7 for an adjournment, judge.

8 Otherwise, I think the simplest way to proceed,
9 judge, is to have these folks on the witness stand, you'll
10 hear their testimony, and wrap it all together as far as
11 the TRO application that is before you, instead of having
12 it piecemeal, doing the TRO and then doing the testimony
13 during the trial.

14 THE COURT: I'm prepared to do that. But I
15 guess I don't understand what the request for adjournment
16 would be. You are asking me to adjourn if they're going
17 to amend, but then you cite the TRO as part of the trial.

18 MR. NARDO: The TRO has already been decided,
19 but now they're asking for some sort of permanent
20 injunction for which they have to amend the complaint.
21 And if they're going to amend the complaint, then maybe we
22 want to make a motion. We want time to answer. They
23 could always bring a separate complaint, judge.

24 THE COURT: Amending the complaint I think poses
25 some issues because we don't have the amended complaint.

1 They would, obviously, be entitled to consider whether
2 they want to ask for an adjournment or if they want
3 discovery in connection with any charge of retaliation.

4 So I'm a little bit concerned that the
5 Department of Labor is proposing to amend the complaint
6 when we're ready to begin.

7 MR. HENNEFELD: Your Honor, I repeat, we would
8 need to amend the complaint to conform with the evidence
9 as related by the rules. And obviously, if we had known
10 of the complaint going back sooner, we would have amended
11 this as soon as we knew of it. But given that this
12 happened then on Friday and the facts will, we believe,
13 come out in court here today, we will seek to amend.

14 THE COURT: Yes. I understand, because,
15 obviously, this all happened two days ago. I haven't had
16 a chance to look into all of this first before proceeding
17 on any amended complaints to address retaliation.

18 But I just go back to the relief. It sounds
19 like they would consent to the fact that he was not
20 retaliating. If your relief is to prevent them from
21 retaliating against any employees, it sounds like there
22 would be consent to that relief.

23 So I'm not sure what the purpose would be of
24 adding it in order to achieve a form of relief that I
25 think Mr. Nardo has stated his clients are willing to

1 consent to.

2 Am I correct or not?

3 MR. NARDO: As I understand it, judge, the TR0
4 continues through April 10th, 2012. I have explained it,
5 I have discussed the situation with my client, and he has
6 said that he is not terminating them, he didn't intend to
7 terminate them, and I don't believe there is any issue
8 about their termination, judge.

9 And he doesn't -- you have to realize that this
10 is a restaurant with three people in the kitchen. This is
11 a very small restaurant, judge. So if they were
12 terminated, he would have no operation, either.

13 But in any event, there is no intent to
14 terminate them. They're free to come back to work
15 tomorrow, April 10.

16 THE COURT: The bottom line is, Mr. Hennefeld,
17 if you are seeking to amend the complaint in any way, you
18 have to put it in writing. We're not going to proceed on
19 an oral amendment to the complaint, in light of their
20 objection, if you are doing so at this point.

21 So I don't know how you want to proceed. I'm
22 not faulting you, because obviously this came up on
23 Friday, but I don't think you can just orally amend the
24 complaint and say we're ready to go.

25 So I don't know what you want to do, whether you

1 want to take a few moments to discuss it with Mr. Nardo,
2 or how you want to proceed.

3 MR. HENNEFELD: Could you give me one moment,
4 your Honor?

5 THE COURT: Sure.

6 (There was a pause in the proceedings.)

7 MR. HENNEFELD: Your Honor, we would like to
8 proceed and we will submit an amended complaint in
9 writing. I just note that the amended complaint will be
10 to conform the evidence that is elicited today. And I
11 have asked that your Honor reserve judgement as to how to
12 dispose of our request for continued relief based on the
13 evidence today.

14 MR. NARDO: I don't believe that puts us in any
15 different position, your Honor. The complaint is a
16 pleading. That is something you do at the beginning of a
17 case to put the opposite party on notice. And the
18 opposite party, the opposing party, reviews these
19 allegations, asks for discovery, if they want depositions.

20 These are allegations that were never before in
21 the complaint at all. It is not as if this is a
22 continuation of something. These are brand-new
23 allegations.

24 So, again, if they want to file and serve an
25 amended complaint, we're going to request an adjournment.

1 THE COURT: Why don't I propose this. This is,
2 I think, along the lines of the possibility you were
3 suggesting earlier.

4 I'm going to hear the claims that are currently
5 in the complaint which were the basis for the trial
6 proceeding today, because there is a pending TRO and
7 they're asking at a minimum that it be converted into a
8 preliminary injunction; that in conjunction with the
9 testimony of these employees today, I would hear the
10 evidence regarding what transpired over the weekend for
11 purposes of a preliminary injunction application, which
12 would be pending a potential motion to amend the complaint
13 at some future time.

14 So it wouldn't be part of the claim the court is
15 hearing today, with the exception of purposes of seeing if
16 I should continue an injunction to honor that a charge
17 that, I guess, would be the subject of a separate trial if
18 there was a retaliation complaint added. If we were to go
19 forward, that potentially would be part of a separate
20 trial, but it would not be part of what the court would be
21 deciding for purposes of this case, at least at this
22 juncture.

23 Does that make sense or not?

24 MR. NARDO: The only thing I'd say, your Honor,
25 they could just as easily file another complaint on these

1 facts and then they would not be connected with this trial
2 at all.

3 THE COURT: I know, but in the meantime they
4 don't want any action taken against these employees.
5 That's why we just can't separate them out and say we will
6 deal with that at some later date.

7 The bottom line is, the TRO expires tomorrow,
8 and absent some type of preliminary injunction, they could
9 then be terminated, which they don't want. So that is why
10 I thought at least hearing it for purposes of preliminary
11 injunction that they were seeking would make sense.
12 That's the issue we will deal with first. We'll stop the
13 trial. We don't have to go to the trial right now. We'll
14 deal with the preliminary injunction, that they not be
15 fired, do that first. If you want a judgment of that, I
16 think I would consider that, but that would be the first
17 thing we do this morning.

18 I'm just proposing that we wrap that issue up in
19 the trial testimony of these witnesses.

20 MR. NARDO: Insofar as it is for the preliminary
21 injunction, at most.

22 THE COURT: Yes.

23 MR. NARDO: Okay. All right. That's fine, your
24 Honor.

25 THE COURT: Is that acceptable to the Department

1 of Labor?

2 MR. HENNEFELD: Yes, your Honor.

3 THE COURT: Okay.

4 All right. We're going to take a five-minute
5 break to take a criminal case I need to deal with first.
6 You can stay where you are.

7 I will ask the lawyers in the criminal matter to
8 come forward.

9 (A recess was taken.)

10 THE COURT: We'll proceed with the bench trial
11 in conjunction with the motion for a preliminary
12 injunction to enjoin the defendants from terminating the
13 employees in retaliation.

14 Let's we will begin with the opening statements.
15 You don't have to give an opening if you don't wish, but I
16 will give each side an opportunity to do that, starting
17 the Department of Labor.

18 MR. HENNEFELD: Your Honor, prior to an opening
19 statement, we wanted to propose to do some housekeeping on
20 exhibits.

21 THE COURT: Go ahead.

22 MR. HENNEFELD: Also, I want to introduce our
23 party representative for the US Department of Labor,
24 Miss Zorayda Vasquez, who is the investigator.

25 MS. VASQUEZ: Good morning.

1 MR. HENNEFELD: So, if I may, on the exhibits,
2 your Honor.

3 We have some exhibits where the defense made no
4 objections, and, again, some exhibits where there are
5 limited objections we can deal with during briefing.

6 THE COURT: Okay.

7 MR. HENNEFELD: So, your Honor, for Plaintiff's
8 Exhibit 1, the defendants made no objection in the
9 pretrial order, so we move to admit Plaintiff's Exhibit 1.
10 That is the US Department of Labor request for business
11 data form completed by the defendant.

12 THE COURT: Mr. Nardo?

13 MR. NARDO: No objection, judge.

14 THE COURT: Okay. Plaintiff's Exhibit 1 is
15 admitted.

16 (Plaintiff Exhibit 1 in evidence.)

17 MR. HENNEFELD: Your Honor, we would prefer to
18 proceed numerically.

19 THE COURT: Yes, I agree with that. If you want
20 to do the ones that are in agreement that certain exhibits
21 will be admitted, you can just list those and then I'll
22 admit them all as a group, rather than doing each, one by
23 one.

24 MR. HENNEFELD: All right, your Honor.

25 With respect to Exhibits 2 through 4, those are

1 all the payroll records of the defendants, Defendants made
2 no objection as to the authenticity or any other
3 objection, apart from relevance.

4 We are offering these exhibits as evidence of
5 the defendant's payable record-keeping practices. We
6 certainly believe they're relevant in that they are
7 admissions of the defendant.

8 We move to admit Exhibits 2 through 4.

9 MR. NARDO: Judge, I'm not sure it makes sense
10 to try to admit disputed --

11 THE COURT: I agree. I didn't realize this is
12 what you were doing.

13 I don't want to go through all the documents and
14 rule on them one by one. At the appropriate time you
15 should offer them through the appropriate witness. If
16 there is any objection on relevance or other grounds, then
17 I will hear you at that time rather than trying to decide
18 them all prior to the start of the trial. I think it
19 makes sense to do it this way.

20 I thought that there was a large group of
21 exhibits that there were no objections to that both sides
22 would agree would be admitted at the start of the trial.
23 If that's not the case, we should just proceed.

24 MR. HENNEFELD: Understood, your Honor.

25 There are a few other exhibits where there are

1 no objections.

2 THE COURT: Okay. Go ahead.

3 MR. HENNEFELD: Plaintiff's Exhibit 8, New York
4 State Department of Labor Notice of Labor Law Violation.
5 This is a public document that is accompanied by a
6 declaration that is the basis for Rule 8038, Public
7 Records Offer. The defendants objected to the declaration
8 but not to the underlying document of the exhibit.

9 THE COURT: So you're just offering the
10 underlying document or you're offering both?

11 MR. HENNEFELD: If the defendants don't object
12 to the underlying documents, we are happy to offer simply
13 the underlying documents.

14 MR. NARDO: The underlying document is Exhibit
15 A, judge. And we don't object to the Exhibit A.

16 THE COURT: So we will call that 8A. 8A is
17 admitted then?

18 MR. NARDO: Yes, your Honor.

19 THE COURT: Okay.

20 (Plaintiff Exhibit 8A in evidence.)

21 MR. HENNEFELD: And finally, there are two
22 depositions. One is Plaintiff's Exhibit 12, which is
23 excerpts of the deposition of defendants. And the
24 defendant's only objection is to the relevance of some
25 specific excerpts. The defendants did not specify which

1 excerpts they were objecting to on relevance.

2 MR. NARDO: My copy is highlighted. I guess the
3 highlighted portions are what you're seeking to --

4 MR. HENNEFELD: Yes.

5 MR. NARDO: I would have to take a closer look
6 at that, judge.

7 THE COURT: Why don't we hold off on that, then,
8 until you have had a chance to look at the highlighted
9 portions.

10 Is there one more?

11 MR. HENNEFELD: Yes.

12 Finally, with respect to Plaintiff's Exhibit 13,
13 deposition of Isidro Banegas, plaintiff is offering
14 excerpts that defendant had also designated the
15 excerpts -- I think we're probably in agreement that that
16 deposition, generally, is admissible and that this is an
17 employee witness who is out of the country and unavailable
18 to testify.

19 MR. NARDO: Judge, as long as our
20 counterdeposition designations, if we had anything going
21 in, or if not and he's out of the country we'd like to --
22 no, we have -- our counterdepositions are Exhibit G.

23 THE COURT: So as long as Exhibit G comes in
24 with the highlighted portions of 13, you're okay with
25 that?

1 MR. NARDO: Yes, your Honor.

2 THE COURT: Is that acceptable?

3 MR. HENNEFELD: Yes, your Honor.

4 We have a relevance objection to just one of the
5 defendant's designations. That objection is listed in
6 defendant's exhibit list, to Defendant G. So apart from
7 that, we're in accord.

8 THE COURT: Well, is there one particular
9 passage that you have a relevance objection?

10 MR. HENNEFELD: It is on Page 29, starting at
11 line 17, through Page 30, line 8.

12 THE COURT: I'm going to allow it over the
13 relevance objection. This is the basic educational
14 background. How long he has been in the country. Is that
15 the objection that you are referring to?

16 MR. HENNEFELD: Yes, your Honor.

17 THE COURT: It could have relevance in terms of
18 the conversations that he presumably had with other
19 people. I'm going to allow it as basic information that
20 is always elicited from a witnesses. I don't think it is
21 prejudicial in any way.

22 So I will overrule the relevance objection.
23 With that, Plaintiff's 13 and Defendant's Exhibit G are
24 admitted, correct?

25 MR. HENNEFELD: Yes, your Honor.

Opening for Plaintiff/Ms. Goldstein

19

1 MR. NARDO: Yes, your Honor.

2 (Plaintiff Exhibit 13 in evidence.)

3 (Defense Exhibit G in evidence.)

4 THE COURT: Anything else?

5 MR. HENNEFELD: That is all on exhibits, your
6 Honor. Thank you.

7 THE COURT: Is there anything you want to raise,
8 Mr. Nardo, before you start with the opening statements?

9 MR. NARDO: No, your Honor.

10 THE COURT: Okay. The Department of Labor goes
11 first.

12 MS. GOLDSTEIN: Good morning, your Honor.

13 THE COURT: Good Morning.

14

15 OPENING FOR PLAINTIFF

16

17 MS. GOLDSTEIN: My name is Elena Goldstein.

18 Together with my cocounsel, Daniel Hennefeld,
19 and Zorayda Vasquez, with the Wage/Hour Division of the U.
20 S. Department of Labor, we represent the plaintiffs in
21 this case.

22 THE COURT: Take your time. There's no rush.
23 Just slow down, okay?

24 MS. GOLDSTEIN: And with Zorayda Vasquez, with
25 the Wage/Hour Division of the U. S. Department of Labor,

Opening for Plaintiff/Ms. Goldstein

20

1 we represent the plaintiffs in this case.

2 This case involves an upscale Italian restaurant
3 that, nearly four years after the initial investigation of
4 this case and nearly three years after the complaint was
5 filed in this case, still refuses to comply with the
6 requirements of the Fair Labor Standards Act.

7 The evidence will show the defendant, SCA
8 Restaurant Corporation, doing business as Luigi Q's
9 Restaurant and Luigi's Bar and Grill, owe more than
10 \$137,000 to 12 of their current and former employees, a
11 number that increases as the days go by because of
12 defendants simple failure to come into compliance with the
13 Act.

14 In this case the Secretary seeks those back
15 wages, an equal amount of liquidated damages, and an
16 injunction against future violations, given defendant's
17 continuing failure to come into compliance.

18 The requirements of the Fair Labor Standards Act
19 are straightforward. Defendants have three basic
20 affirmative obligations. They are required keep records
21 of hours worked and wages paid; required to pay certain
22 statutory required minimum wages for each hour; and
23 required to pay time and a half overtime for hours worked
24 over 40.

25 The evidence will show that defendants have

Opening for Plaintiff/Ms. Goldstein

21

1 failed on each of those counts. They failed to keep
2 records of hours worked and wages paid and they paid
3 weekly salaries that did not and could not have given
4 overtime treatment. And for some employees, when their
5 salaries are divided by the hours worked, did not even
6 equal the statutory required minimum wage.

7 The bulk of this case is not in dispute. The
8 defendants do not dispute that the protection of the Fair
9 Labor Standards Act apply in this case. They've admitted
10 that both SCA Restaurant Corp. and Luigi's Bar and Grill
11 are employers covered by the act and required to comply
12 with it.

13 They've admitted that the employees listed in
14 the Secretary's back wage computation are entitled to
15 protection from the Fair Labor Standards Act. They've
16 even conceded that these 12 workers were, in fact, or are
17 in fact current or former employees of the restaurant.
18 They do not allege that any of these workers are exempt
19 from protection under the Act or otherwise outside of the
20 boundaries of the Fair Labor Standards.

21 They've also conceded the factual basis of the
22 violations here. With respect to the record-keeping,
23 defendants have stipulated from June 2006 through May 2009
24 that they did not keep records of hours worked. The
25 evidence will also show that from May 2009 through the

Opening for Plaintiff/Ms. Goldstein

22

1 present, defendants have produced no records of hours
2 worked and no records of cash wages paid to employees.

3 The facts concerning the amount and the way in
4 which employees were paid are likewise largely not
5 contested. Defendants have admitted that they paid, in
6 Mr. Quarta's words, a fixed weekly salary for hours
7 worked. And the parties are generally in the same
8 ballpark with respect to the amount of work that has been
9 paid.

10 The main factual dispute in this case concerns
11 simply the number of hours worked. And the evidence will
12 show that employees regularly and consistently worked
13 schedules that far exceeded 40 hours a week, working six
14 days each week.

15 The court will hear testimony from current and
16 former employees that will show that on weekdays,
17 employees worked pretty much the same schedule. They
18 arrived at 10:30 in the morning, performed typical
19 preparation work that you would expect at a restaurant,
20 cleaning, preparing food.

21 The evidence will show that between 3:00 and
22 4:30, employees were scheduled to take a break, but that
23 because of the requirements of restaurant customers, some
24 employees were typically not allowed to take that full
25 hour-and-a-half break.

Opening for Plaintiff/Ms. Goldstein

23

1 And employees will testify that they were
2 scheduled to depart, and usually did depart, between 9 and
3 10:30 in the evening, with one of them leaving first. The
4 dishwasher, possibly, left.

5 The testimony will also show that on Saturdays,
6 employees arrived at work at 3 and worked without a break
7 until 10:00, 11, or sometimes even later in the evening.

8 The court will also hear about government
9 surveillance that was conducted of the restaurant, that
10 confirms the schedules that will be described by the
11 employees. And, in sum, the evidence will show that
12 employees typically worked between 53 and 61 hours every
13 week.

14 The court will also hear evidence that the
15 defendants acted willfully in refusing to comply with the
16 law and in trying to cover up their violations with the
17 falsification of records and efforts to intimidate and
18 retaliate against witnesses as this trial progressed. The
19 evidence will show that defendants were well aware of the
20 hours worked by the employees, that with Mr. Quarta's
21 near-constant presence at the restaurant, he was well
22 aware of the hours worked by his workers.

23 The evidence will also show that Mr. Quarta is
24 well aware of requirements of the Fair Labor Standards Act
25 because of his long-standing experience in the restaurant

Opening for Plaintiff/Ms. Goldstein

24

1 industry. And even in 2003, he was visited by the New
2 York State Department of Labor who explained those
3 requirements of wages and hours to him.

4 The Secretary will also show evidence of the
5 defendant's efforts to evade liability. First, the
6 Secretary will show that, despite their stipulation, the
7 defendant kept no records between June 2006 and May 2009
8 of hours worked. The defendant submitted false time
9 records for 2008. Time records that showed that employees
10 worked only five days a week and worked only exactly 40
11 hours a week: time records that faked compliance with the
12 law.

13 The court will also hear evidence concerning
14 retaliating against employees who planned to testify in
15 this case. And the evidence will show that these
16 employees were threatened with termination and that those
17 threats continued even after the defendant was
18 individually served with a temporary restraining order by
19 this court.

20 In sum, the Secretary will show that the
21 defendant engaged in repeated and willful violation of the
22 requirements of the Fair Labor Standards Act and, when
23 caught, the defendant not only refused to comply but
24 attempted to evade liability through falsified records and
25 witnesses.

Opening for Defense/Mr. Nardo

25

1 Thank you, your Honor.

2 THE COURT: Thank you, Ms. Goldstein.

3 Mr. Nardo?

4 MR. NARDO: Thank you, your Honor.

5

6 OPENING FOR DEFENSE

7

8 MR. NARDO: Your Honor, the evidence will show
9 that Luigi Q's is a struggling restaurant. A restaurant
10 that lost \$70,000 last year. A small restaurant, with
11 approximately three to four employees in the kitchen.

12 I am privileged to handle these cases for both
13 plaintiffs and defendants, and on either side you can be
14 put into an uncomfortable situation. Let me say the
15 uncomfortable situation I have when I'm representing
16 plaintiffs.

17 That situation is where you have a defendant or
18 defendants who are going to file for bankruptcy, or who
19 are insolvent, who threaten and actually do file for
20 bankruptcy, and where there is a threat of perhaps that,
21 as plaintiff's counsel we try to resolve a case because we
22 are trying to obtain money for the employees. That is
23 what the statute entitles.

24 And any person who is constrained by a rational
25 analysis and is using a risk-versus-reward analysis of the

Opening for Defense/Mr. Nardo

26

1 situation would try to settle a case in those
2 circumstances because you don't throw good money after
3 bad. As you know, Luigi Quarta filed for bankruptcy and
4 did throw good money after bad in December of 2011.

5 The rational model I just described does not
6 apply, apparently, to the United States government.
7 They're trying to get, it's impossible in this case, to
8 get, money for these employees. Mr. Quarta has no assets
9 and he has already been adjudicated bankrupt. And
10 whatever the restaurant is worth, whatever the silverware
11 and glassware is worth, is going to be a very small amount
12 of money.

13 So, your Honor, this is an exercise in futility
14 because there will be no positive outcome for the
15 employees.

16 And I might tell you, it's the government that
17 is putting the employees in a difficult situation, and
18 this very small restaurant, by asking them to testify
19 against their employer. And this is happening with a
20 government that has \$15 trillion in debt. The government
21 has to borrow hundreds of billions of dollars each month
22 to stay afloat, and here we see the investigators,
23 counsel, back office, all this energy being spent on this
24 small Italian restaurant in Hicksville, judge.

25 Eventually being under the boot of the

Opening for Defense/Mr. Nardo

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1 government, Luigi's restaurant will have to close at some
2 point as a result of this, and waiters, waitresses,
3 dishwashers, chefs, the busboys are all going to be
4 unemployed in one of the worst economies of their
5 lifetime, of our lifetime because of this Department of
6 Labor's lawsuit.

7 I would submit to you, judge, that you heard lot
8 of statements about what is admitted or conceded or
9 stipulated to as part of this litigation. The purpose of
10 that is so that we don't have to go through proving those
11 facts. So your Honor, when those facts come up, hopefully
12 we can just fast-forward at that point, because we don't
13 have to prove something that has already been stipulated
14 to.

15 I will submit to you that there is one issue
16 regarding exemption. We believe that the head chef is
17 exempt from the Fair Labor Standards Act and there should
18 be no award for the head chef because of his duties,
19 because he is supervising, hires and fires and he assigns
20 the work. So that is another issue that you will have
21 before you, your Honor.

22 Thank you.

23 THE COURT: Okay. Let's hear the first on --
24 yes?

25 MS. GOLDSTEIN: Your Honor, if I may just raise

1 an issue with respect to the issue that Mr. Nardo raised
2 concerning that exemption.

3 Defendants did not raise exemption in their
4 answer to this case. They did not raise it in the
5 pretrial order. The parties listed things -- the
6 defendant -- it did not raise any issues of exemption in
7 their finding of facts or conclusions of the law. They
8 have not raised this issue prior to trial.

9 The case law is well established that any
10 exemption defense is an affirmative defense. It must be
11 pled in a party's answer. And I can give the court case
12 law on that.

13 THE COURT: No.

14 MS. GOLDSTEIN: The exemption claim in this
15 defense is waived. It should not be addressed in this
16 proceeding.

17 THE COURT: Mr. Nardo, why wasn't that defense
18 raised earlier?

19 MR. NARDO: I believe it was raised in
20 discussions. Whether or not it's in the paperwork I don't
21 know. But if they can amend the complaint, then we would
22 seek to amend the answer.

23 MS. GOLDSTEIN: Your Honor, this is the
24 exemption that, to the extent it exists, the Secretary
25 does not believe that it does, the predicate to that fact

1 would have existed long ago. That is in direct
2 contradiction to the issues concerning the proposed
3 amended complaint.

4 MR. NARDO: Judge, if I can direct that. It was
5 explored in depositions and I did ask questions about Mr.
6 Pastor, the head chef's authority, at depositions of the
7 employees here.

8 THE COURT: Is that correct? Were there
9 questions regarding his authority and duties?

10 MS. GOLDSTEIN: Your Honor, I believe there were
11 some general questions as to what Mr. Pastor did and what
12 his authority was.

13 Mr. Pastor, himself, was never deposed in this
14 case. Mr. Nardo did not further pursue, never indicated
15 that he intended to pursue the exemption defense. And
16 certainly when the defendants filed their finding of facts
17 and conclusions law, they didn't know or raise this
18 exemption defense. The Secretary certainly views that
19 proposed defense as waived. It was not there. There is
20 no support of this.

21 THE COURT: On the issue of potential prejudice,
22 though, isn't this something that the witnesses you have
23 will be able to testify to in terms of factually whether
24 or not the exemption exists or not? Or are there
25 different witnesses you would need for this?

1 MS. GOLDSTEIN: Your Honor, I think that the
2 witnesses that we have certainly were as privy as anyone
3 else to the authority that Mr. Pastor, the head chef --
4 I'm sorry -- that this individual held in the kitchen.

5 However, it is very clear that the failure to
6 raise this defense anywhere constitutes that we had not
7 prepared for trial in anticipation of defendant's
8 proceeding on that.

9 MR. NARDO: I could point you to the deposition
10 transcripts, if you want, your Honor.

11 THE COURT: I understand that, but I guess I
12 don't understand why it wasn't explicitly raised. Was it
13 an oversight or --

14 MR. NARDO: It was an oversight, your Honor.

15 I would maintain it was raised at deposition.
16 To the extent it was not raised elsewhere, it was an
17 oversight, judge.

18 THE COURT: Okay. But again, if anyone wants a
19 waiver, wants an adjournment to look into that, let me
20 know. I'm going to allow them. If in fact the exemption
21 is a meritorious issue -- I don't know whether it is or
22 not, I'm not going to simply rely on the fact that they
23 are late in raising it, especially if it was something
24 that was covered during the deposition. So it's up to you
25 as to what you want to do.

1 MS. GOLDSTEIN: Your Honor, we will proceed.

2 Would the court like our proposed findings of
3 fact and conclusions of law with respect to the amendment?

4 THE COURT: No. You can add those later, after
5 the trial if you wish. But obviously, you will have to
6 address that issue in the context of your presentation
7 here. Okay?

8 MS. GOLDSTEIN: Thank you, your Honor.

9 THE COURT: Okay. Are you going to call your
10 first witness?

11 My understanding is there is an interpreter here
12 that you will be utilizing.

13 Is that accurate?

14 MR. HENNEFELD: Yes, your Honor.

15 We have brought to the court some
16 federally-certified interpreters, who will be trading off.

17 THE COURT: Go ahead and have them take the
18 oath.

19 (Marcia Gotler was duly sworn to interpret
20 between English and Spanish.)

21 (Isolina Bernhardt was duly sworn to interpret
22 between English and Spanish.)

23 THE DEPUTY: Please state your name and spell it
24 for the record.

25 THE INTERPRETER: Marcia Gotler.

Torres - for the Plaintiff/Mr. Hennefeld

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1 THE INTERPRETER: Isolina Bernhardt.

2 THE COURT: Good morning.

3 Call your first witness.

4 MR. HENNEFELD: The secretary calls Alexander
5 Torres.

6 THE COURT: Mr. Torres, would you step forward
7 please.

8 If you could, just come up to the witness chair.
9 Remain standing while they administer the oath.

10 **EVIDENCE FOR PLAINTIFF**

11

12 **ALVIN ALEXANDER TORRES**

13 called by the plaintiff, having been first duly
14 sworn/affirmed, was examined and testified (through
15 the Spanish interpreters) as follows:

16 MR. HENNEFELD: Your Honor, just in terms of our
17 exhibit binder, should we put a copy up on the witness
18 stand?

19 THE COURT: Yes.

20

21 **DIRECT EXAMINATION**

22 **BY MR. HENNEFELD:**

23 Q. Good morning, Mr. Torres.

24 A. Good morning.

25 Q. Mr. Torres, what is your primary language?

Torres - for the Plaintiff/Mr. Hennefeld

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1 A. Spanish.

2 Q. Do you understand any English?

3 A. No.

4 Q. As you see, there is an interpreter here to translate
5 the questions and answers between English and Spanish.

6 Please wait until the interpreter finishes translating the
7 question into Spanish before you start to answer. Please
8 give your answer only in Spanish. Okay?

9 A. Yes.

10 Q. Mr. Torres, why did you come to court today?

11 A. Because a note came to me. Here it is.

12 Q. Mr. Torres, let's discuss your employment. Did you
13 ever work at Luigi Q's restaurant?

14 A. Yes.

15 Q. When did you start working there?

16 A. I began working there in 2007.

17 No. No. I'm sorry. 2008.

18 Q. What time of year in 2008 did you start working
19 there?

20 A. February.

21 Q. And do you still work at Luigi Q's restaurant?

22 A. No.

23 Q. When did you stop working there?

24 A. September of 2009.

25 Q. What was your job at Luigi Q's restaurant?

Torres - for the Plaintiff/Mr. Hennefeld

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- 1 A. Dishwasher.
- 2 Q. Did you know Luigi Q?
- 3 A. Yes.
- 4 Q. Who was he?
- 5 A. He was the owner of the restaurant.
- 6 Q. Was there also a manager at the restaurant?
- 7 A. No.
- 8 Q. Did you know someone named Vinnie at the restaurant?
- 9 A. Yes.
- 10 Q. What did Vinnie do at the restaurant?
- 11 A. He was the one who brought the orders to the cook.
- 12 Q. And did Vinnie work at the restaurant the whole time
- 13 that you were there?
- 14 A. No. He left.
- 15 Q. And who replaced -- did someone replace Vinnie after
- 16 he left?
- 17 A. Yes.
- 18 Q. What was his name?
- 19 A. Omar.
- 20 Q. How did you get the job at Luigi's restaurant?
- 21 A. Through a cousin of mine who worked there. He left
- 22 and he left the position to me.
- 23 Q. What was your cousin's name?
- 24 A. Johnny Diaz.
- 25 Q. What was Johnny Diaz's job at the restaurant?

Torres - for the Plaintiff/Mr. Hennefeld

35

1 A. Dishwasher.

2 Q. Approximately how long did Johnny Diaz work there?

3 A. I don't know. Maybe three months or so.

4 Q. Let's talk about your work schedule at Luigi's
5 restaurant.

6 When you started working at the restaurant,
7 which days of the week did you work?

8 A. Mondays through Saturdays.

9 Q. Was the restaurant open on Sundays?

10 A. No.

11 Q. Let's talk about the start of your workday.

12 On weekdays what time did you start work at the
13 restaurant?

14 A. 10:30.

15 Q. On weekdays did you always start work at 10:30 in the
16 morning?

17 A. That was the time I started from Mondays through
18 Fridays.

19 Q. And why was that?

20 MR. NARDO: Objection.

21 THE COURT: Overruled.

22 A. Because that was the time the restaurant was open.

23 BY MR. HENNEFELD:

24 Q. Were you ever told to arrive for work later than
25 10:30 in the morning on a weekday?

Torres - for the Plaintiff/Mr. Hennefeld

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1 A. No. Only on Saturdays.

2 Q. What time did you start work on Saturdays?

3 A. 3 o'clock.

4 Q. Was that 3 o'clock in the afternoon?

5 A. Yes.

6 Q. Were you ever told to arrive for work later than 3 in
7 the afternoon on a Saturday?

8 A. No.

9 Q. On weekdays did you take any breaks during the
10 workday?

11 A. You mean like an hour off?

12 Q. Yes. Did you have any time off during the day on
13 weekdays?

14 A. Yes. I had 3 to 4:30 off.

15 Q. And was that 3 to 4:30 in the afternoon?

16 A. Yes.

17 Q. And that was Monday through Friday?

18 A. Yes. Monday through Friday.

19 Q. Were you ever told that you could take a longer break
20 than that?

21 A. No.

22 Q. Did you take any other breaks during the workday?

23 A. No.

24 Q. And on Saturdays did you have a break during the
25 workday?

Torres - for the Plaintiff/Mr. Hennefeld

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1 A. No. Not on Saturdays.

2 Q. Let's talk about the end of your workday.

3 Did you leave work from the restaurant at the
4 same time each night?

5 A. No.

6 Q. Why not?

7 A. That would depend on how the people were as far as
8 customers go.

9 Q. What was the range of times that you left at night?

10 A. Well, from Mondays through Wednesdays, it was always
11 usually the regular time. We almost -- we hardly ever
12 left after 9 o'clock from Mondays through Wednesdays.

13 Q. And what about Thursdays through Saturdays?

14 A. Then the time would change and I would get out later.

15 Q. Okay. So let's go through each night of the week.

16 On Monday through Wednesdays, what time did you
17 usually stop working for the night?

18 MR. NARDO: Objection. Asked and answered.

19 THE COURT: No. I will allow him to respond.

20 A. From Monday through Wednesdays, I would get out
21 between 9 and 10 PM.

22 BY MR. HENNEFELD:

23 Q. On Mondays through Wednesdays, were you ever able to
24 leave before 9 PM?

25 A. No. Hardly at all.

Torres - for the Plaintiff/Mr. Hennefeld

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1 Q. On Monday through Wednesdays, did you ever leave work
2 later than 10 PM?

3 MR. NARDO: Objection, leading.

4 THE COURT: Overruled.

5 THE WITNESS: I can answer?

6 THE COURT: Yes.

7 A. Yes. It was sometimes when I got out later, but
8 those were few times that I got out later.

9 BY MR. HENNEFELD:

10 Q. And on Thursdays what time did you usually stop
11 working?

12 A. 10:30 or 11 at the earliest.

13 Q. And on Fridays what time did you usually stop working
14 for the night?

15 A. On Wednesdays I almost always worked until at least
16 11:30. 11 would be earliest.

17 Q. Mr. Torres, you just answered about Wednesdays. Just
18 to clarify, were you talking about Wednesdays or Fridays?

19 MR. NARDO: Objection, judge.

20 THE COURT: No. Overruled. I'm confused.

21 The question was Fridays and the answer was
22 Wednesdays, so I'm not sure what the witness means to
23 answer.

24 A. You were asking me about Wednesday, not Friday.

25 MR. HENNEFELD: May I repeat the question, your

Torres - for the Plaintiff/Mr. Hennefeld

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1 Honor?

2 THE COURT: Yes.

3 BY MR. HENNEFELD:

4 Q. Mr. Torres, on Fridays what time did you usually stop
5 working at night?

6 A. 11:30. From 11 until 11:30.

7 Q. And on Saturdays what time did you usually stop
8 working at night?

9 A. The same time also. I practically always left around
10 that time.

11 Q. So Fridays and Saturdays, were you ever able to leave
12 work before 11 at night?

13 A. Yes, but I would only leave early by coincidence.

14 Q. When you say by coincidence, can you explain what you
15 mean by that.

16 A. That would be if I might get out on a Friday when
17 there weren't a lot of customers.

18 Q. And approximately how often did that happen on
19 Fridays and Saturdays?

20 A. Well, as I said, that would just be like one time
21 during a period of time.

22 Q. The weekly schedule that you've just described, did
23 you work that same schedule every week at the restaurant?

24 A. Yes. Almost every week that same schedule.

25 Q. Mr. Torres, how did you know when you could stop

Torres - for the Plaintiff/Mr. Hennefeld

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1 working each night at the restaurant?

2 A. Well, I was able to leave when there were no more
3 customers left.

4 Q. Did you talk to anyone ever before leaving the
5 restaurant for the night?

6 A. Yes.

7 Q. Who did you speak with before leaving the restaurant
8 at night?

9 A. Vinnie.

10 Q. And what did you say to Vinnie before leaving the
11 restaurant at night?

12 A. Well, I would ask him whether there were any more
13 customers, to find out if I could leave.

14 Q. Mr. Torres, did your schedule of how many days per
15 week you worked ever change?

16 A. Yes.

17 Q. How did your schedule change?

18 A. Well, there was one time when I was only given from
19 Monday -- well, I got a day off during the week.

20 Q. When you say you got a day off during the week, do
21 you mean an additional day off besides Sunday?

22 A. Yes.

23 Q. You still had Sunday off?

24 A. Yes.

25 Q. When your schedule changed, what was your additional

Torres - for the Plaintiff/Mr. Hennefeld

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1 day off? Which day of the week?

2 A. Sometimes I was given Tuesdays or else Wednesdays.

3 Q. And when your schedule changed, did you otherwise
4 still work the same hours each day that you described for
5 us?

6 A. Yes.

7 Q. Approximately how much time was it between when you
8 first started working at the restaurant and when your
9 scheduled changed to get an extra day off?

10 A. I don't remember.

11 Q. Had you been working at the restaurant at least two
12 months when that happened?

13 A. No. I had been working there for longer than that.

14 Q. And did you ever go back to work Monday through
15 Saturday with only Sunday off?

16 A. Yes.

17 Q. About how much time was it before you went back to
18 working Monday through Saturday again?

19 A. I don't remember for how long I worked with an extra
20 day off during the week. I don't remember.

21 Q. Was it more than four months?

22 A. No, it was less than four months. It was a very
23 short period of time.

24 Q. Let's talk about your pay at Luigi's restaurant.

25 How were you paid for your work at the

Torres - for the Plaintiff/Mr. Hennefeld

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1 restaurant?

2 A. Cash.

3 Q. Who paid you at the restaurant?

4 A. Luigi.

5 Q. Were you paid every week at the restaurant?

6 A. Yes.

7 Q. How much were you paid?

8 A. \$400.

9 Q. Is that \$400 per week?

10 A. Yes.

11 Q. Did you receive exactly \$400 every week or did the
12 amount change at all?

13 A. No. For the whole time. During the time I was
14 working, I was given that every week.

15 Q. How did you first find out that you would be paid
16 \$400 per week?

17 A. Well, when I started work there, I was not told how
18 much I was going to be paid.

19 Q. When you first started working at the restaurant,
20 were you told anything about your pay?

21 A. No.

22 Q. When you first started working there, were you told
23 anything about minimum wage?

24 MR. NARDO: Objection.

25 THE COURT: Overruled.

Torres - for the Plaintiff/Mr. Hennefeld

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1 A. No.

2 BY MR. HENNEFELD:

3 Q. When you first started work, there were you told
4 anything about overtime?

5 A. No.

6 Q. During all the time that you worked at the
7 restaurant, did anyone from the restaurant tell you
8 anything about minimum wage?

9 A. No.

10 Q. During all time you worked at the restaurant, did
11 anyone from the restaurant tell you anything about
12 overtime?

13 A. No.

14 Q. Did you ever get a raise in your pay?

15 MR. NARDO: Objection.

16 THE COURT: Overruled.

17 A. No.

18 BY MR. HENNEFELD:

19 Q. When your schedule changed to the extra day off, did
20 your pay change?

21 A. Yes.

22 Q. What did your pay change to during that time?

23 A. I don't remember how much I was getting, but I was
24 being paid less than 400.

25 Q. And when your schedule changed back to Monday through

Torres - for the Plaintiff/Mr. Hennefeld

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1 Saturday again, did your pay change again?

2 A. Yes.

3 Q. What did your pay change to then?

4 A. It went back to 400 again.

5 Q. Were there any weeks when the restaurant was closed?

6 A. Yes. One week.

7 Q. What time of year was that?

8 A. I don't remember. I think it was in August.

9 Q. And was the restaurant closed for a week in both of
10 the years that you worked there?

11 MR. NARDO: Objection, judge. Mischaracterizes
12 the testimony. The testimony was that he started in 2008
13 and left in 2009.

14 THE COURT: September of 2009, right?

15 MR. NARDO: Yes.

16 THE COURT: So it was two Augusts. The question
17 is, did it close for one week in August of 2008 and August
18 of 2009?

19 MR. HENNEFELD: Yes, your Honor.

20 A. Yes.

21 BY MR. HENNEFELD:

22 Q. Were you paid for those weeks?

23 A. No.

24 Q. Let's talk about other employees at the restaurant.

25 Who else worked at the restaurant when you were

Torres - for the Plaintiff/Mr. Hennefeld

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1 there?

2 A. Pastor. Jeffrey. Juan Carlos. And Alex.

3 Q. What days of the week did the other employees work?

4 A. The same. They also worked six days a week.

5 Q. What time did the other employees start work each
6 weekday?

7 A. At the same time.

8 Q. And what time was that?

9 A. 10:30.

10 Q. 10:30 in the morning?

11 A. Yes.

12 Q. What time did the other employees start work on
13 Saturdays?

14 A. At 3 o'clock in the afternoon.

15 Q. What time did the other employees end their break in
16 the afternoon?

17 A. What do you mean? The time off?

18 Q. You testified that the other employees started their
19 break at 3 in the afternoon. Correct?

20 THE COURT: You were using the term *break*.

21 Why are you using the term break? He said they
22 start their day at 3 o'clock.

23 MR. HENNEFELD: My apologies, your Honor.

24 BY MR. HENNEFELD:

25 Q. Mr. Torres, did the other employees take a break

Torres - for the Plaintiff/Mr. Hennefeld

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1 during the weekdays?

2 THE INTERPRETER: During the weekdays?

3 MR. HENNEFELD: Yes.

4 A. Yes. They also had a hour and a half break, the same
5 time.

6 BY MR. HENNEFELD:

7 Q. The same time, meaning 3 to 4:30 in the afternoon?

8 A. Yes.

9 Q. Did all the employees leave work together each night?

10 A. No.

11 Q. Who usually left first at night?

12 A. Pastor.

13 Q. What was Pastor's job at the restaurant?

14 A. Well, he was what you call the chef.

15 Q. And when did Pastor usually leave the restaurant for
16 the night?

17 A. Well, he would leave earlier, sometime around 9
18 o'clock.

19 Q. What about on Fridays and Saturdays? What time did
20 Pastor usually leave for the night?

21 A. He would leave later, but he would always leave
22 before me.

23 Q. And who left next at night after Pastor?

24 A. Jeffrey.

25 Q. What was Jeffrey's job at the restaurant?

Torres - for the Plaintiff/Mr. Hennefeld

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1 A. Cook.

2 Q. And when did Jeffrey usually leave for the night?

3 A. Sometimes he would leave 45 minutes after Pastor.

4 Q. And did Jeffrey work at the restaurant the whole time
5 that you worked there?

6 A. Yes.

7 Q. Who left next at night after Jeffrey?

8 A. Sometimes Juan Carlos would leave next.

9 Q. What was Juan Carlos's job at the restaurant?

10 A. Salad man.

11 Q. When did Juan Carlos usually leave for the night?

12 A. Well, there were times when Juan Carlos would leave
13 at the same time when I would leave.

14 Q. And who left next, after Juan Carlos, for the night?

15 A. Myself.

16 Q. You also mentioned an employee at the restaurant
17 named Alex.

18 A. Yes.

19 Q. Is that a different Alex than you?

20 A. Yes.

21 Q. That other Alex, what was his job at the restaurant?

22 A. He was what you call a busboy.

23 Q. And when did Alex the busboy usually leave for the
24 night?

25 A. There were times when he would leave together with me

Torres - for the Plaintiff/Mr. Hennefeld

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1 and there were times when he would stay behind.

2 Q. When was Vinnie at the restaurant?

3 A. He was at the restaurant the whole week.

4 Q. When was Luigi at the restaurant?

5 A. He would be there the whole week, as well.

6 Q. Who opened the restaurant each day?

7 A. Well, sometimes Luigi would arrive first or Vinnie
8 would arrive first. They were the ones who would open the
9 restaurant.

10 Q. After Vinnie was replaced by Omar, would Omar also
11 open the restaurant?

12 A. Yes.

13 Q. Then approximately what time did customers usually
14 start arriving for lunch?

15 MR. NARDO: Objection.

16 THE COURT: On what grounds?

17 MR. NARDO: We're here, judge, because of the
18 hours that the employees allegedly worked. When the
19 customers arrived for lunch, I don't think that's
20 relevant.

21 THE COURT: What is the relevance of when the
22 customers arrived?

23 MR. HENNEFELD: Just trying to provide
24 background on Mr. Torres's duties during the course of the
25 day.

Torres - for the Plaintiff/Mr. Hennefeld

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1 THE COURT: You can ask him what his duties are.
2 I don't think we need to know when the customers started
3 arriving.

4 MR. HENNEFELD: I understand, your Honor.

5 BY MR. HENNEFELD:

6 Q. Mr. Torres, before customers started arriving for
7 lunch, what did you do at the restaurant?

8 A. Well, before the customers came in, what I did was to
9 wash the stuff that the cook made dirty.

10 Q. And when customers started arriving for lunch, what
11 did you do then?

12 A. Well, the very first thing that I did when I came in
13 was to clean the bathrooms inside.

14 And after I left the bathrooms, then I would
15 wash the things that the cooks had made dirty when they
16 were doing the prepping.

17 Q. What did you do when the customers were there at
18 lunch?

19 A. Well, I would be either washing glasses or cleaning
20 dirty areas, things of that sort.

21 Q. And then after your break, when your break ended at
22 4:30, what did you do then?

23 A. Well, sometimes they would have me clean the parking
24 lot or sometimes I would be watering some plants.

25 Q. And when the customers were there eating dinner, what

Torres - for the Plaintiff/Mr. Hennefeld

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1 did you then?

2 A. Well, when the customers were there having dinner, I
3 would be either washing the glasses or their dishes all
4 the time.

5 Q. If there weren't a lot of customers there during the
6 meal, what did you do?

7 A. Well, sometimes there were times when I would clean
8 the fridges. Or else, I would clean the walls where there
9 was a lot of oil on them.

10 Q. Let's talk about records at the restaurant. When you
11 first started working at Luigi's restaurant, were you
12 given any papers?

13 A. No.

14 Q. Were you given a pay stub with your pay?

15 A. An envelope.

16 Q. Was anything written on the envelope?

17 A. No. Just my name.

18 Q. Did you ever punch in on a time clock at the
19 restaurant?

20 A. No.

21 Q. Did the restaurant have any time-keeping systems to
22 record your hours?

23 A. No.

24 Q. During all the time that you worked at the
25 restaurant, were you ever asked to sign any papers at the

Torres - for the Plaintiff/Mr. Hennefeld

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1 restaurant?

2 A. Yes.

3 Q. Mr. Torres, if you could please turn to Plaintiff's
4 Exhibit 6 in the exhibit binder near your seat.

5 MR. HENNEFELD: Your Honor, may the interpreter
6 assist the witness in finding the exhibit?

7 THE COURT: Yes.

8 INTERPRETER: I will be happy to.

9 THE COURT: How much longer do you have on your
10 direct?

11 MR. HENNEFELD: I'm almost done, your Honor.

12 BY MR. HENNEFELD:

13 Q. Mr. Torres, please take a moment to locate the two
14 pages in Exhibit 6 in front of you.

15 A. Okay.

16 Q. Mr. Torres, do you recognize these papers in Exhibit
17 6?

18 A. Yes.

19 Q. What are these papers?

20 A. This paper was taken to the office.

21 MR. NARDO: Judge, I have an objection. This
22 goes back to what I had said earlier about the
23 stipulations.

24 Stipulation No. 15 says during the period of
25 June 5, 2006, through at least May 21, 2009, the defendant

Torres - for the Plaintiff/Mr. Hennefeld

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1 did not keep written records of the hours worked by their
2 employees.

3 We stipulated to that, and now the plaintiff is
4 offering written records of the hours worked by the
5 employees. So we have a stipulation that there are none.
6 I don't see how the plaintiff can offer this evidence.

7 MR. HENNEFELD: Your Honor, we intend to offer
8 this record as relevant to the willfulness and the
9 defendant's preparation and production of false records
10 despite their subsequent stipulation that they hadn't had
11 records.

12 THE COURT: So your contention is that these
13 records are false records, right?

14 MR. HENNEFELD: Yes, your Honor.

15 THE COURT: The objection is overruled. It goes
16 to the issue of willfulness.

17 MR. NARD0: If I just may, judge. The
18 stipulation says the defendant does not keep written
19 records of the hours worked by their employees.

20 THE COURT: Right. I assume that the
21 stipulation means *true* written records. Correct?

22 MR. NARD0: I think it means *any* written
23 records. We didn't say true or false.

24 THE COURT: Mr. Hennefeld?

25 Why is there a stipulation that there were no

Torres - for the Plaintiff/Mr. Hennefeld

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1 records?

2 MR. HENNEFELD: Your Honor, that is the
3 defendant's position, that as a practice they did not keep
4 time records; and there is an admission that as a practice
5 they did not. But yet, contrary to that, they did make
6 and produce these false records and produced them to the
7 Department of Labor, we believe in perhaps a vague
8 compliance, to show compliance.

9 THE COURT: I'm going to allow it despite the
10 stipulation. Their evidence that false records were
11 submitted to the Department of Labor, certainly that would
12 go, at a minimum, to the issue of willfulness. So I'm
13 going to allow it.

14 BY MR. HENNEFELD:

15 Q. Mr. Torres, you testified that you saw these papers
16 in Exhibit 6 in the office.

17 What office do you mean?

18 A. No. I mean the kitchen. In the kitchen. Where you
19 cook.

20 Q. The kitchen at Luigi's restaurant?

21 A. Yes.

22 Q. And then did you sign these papers in Exhibit 6?

23 A. Yes.

24 Q. When did you sign these papers?

25 A. When I used to work there at the restaurant.

Torres - for the Plaintiff/Mr. Hennefeld

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1 Q. Did you understand these papers when you signed them?

2 A. No. Because these papers were given to Pastor.

3 Q. Who gave these papers to Pastor?

4 A. Well, it must have been Luigi because he was the
5 owner of the restaurant.

6 MR. NARDO: Objection.

7 THE COURT: Sustained. I will strike that
8 response.

9 BY MR. HENNEFELD:

10 Q. Mr. Torres, why did you sign these papers?

11 A. Because Luigi told Pastor that we had to sign those
12 papers.

13 MR. HENNEFELD: Your Honor, plaintiff moves to
14 admit Exhibit 6 into evidence.

15 MR. NARDO: Judge, we will object based on the
16 stipulation that says, in relevant part, *the defendants*
17 *did not keep written records of the hours worked by their*
18 *employees.* And once the plaintiff has stipulated to that,
19 your Honor, it is the defendant's position that the
20 plaintiff cannot then present written records of the hours
21 worked by the employees.

22 THE COURT: Okay. The objection is overruled on
23 that ground.

24 The court reads the stipulation to mean true
25 records of the hours worked by the employees. And the

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 this evidence, the Secretary of labor submits, was false
2 evidence of hours worked that were submitted to the
3 Department of Labor.

4 Therefore, I'm going to allow it on the issue of
5 willfulness. So Exhibit 6 is admitted.

6 (Plaintiff Exhibit 6 in evidence.)

7 MR. HENNEFELD: No further questions for this
8 witness, your Honor.

9 THE COURT: I want to take our morning break.
10 We will take a 10-minute break and then proceed with the
11 cross-examination.

12 (Recess taken from 11:20 am until 11:35 am.)

13 THE COURT: When you are ready, Mr. Nardo.

14

15 CROSS-EXAMINATION

16 BY MR. NARDO:

17 Q. Good morning, Mr. Torres.

18 A. Good morning.

19 Q. I'm going to ask you some questions, just like
20 Mr. Hennefeld just did.

21 A. All right.

22 Q. When you worked at Luigi Q's you didn't wear a wrist
23 watch. Correct?

24 A. No, I did not.

25 Q. And did you keep any documents about the hours you

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 worked for Luigi Q's?

2 A. No.

3 Q. So when you testified about the hours you worked at
4 Luigi Q's, that is based on your memory. Correct?

5 A. Yes.

6 Q. And you began working at Luigi Q's in February of
7 2008. Is that right?

8 A. Yes.

9 Q. And do you recall that we have met before,
10 Mr. Torres?

11 A. Yes.

12 Q. Do you recall coming to my office on July 19, 2010,
13 for a deposition?

14 A. Yes.

15 Q. And do you recall being under oath at the time of
16 your deposition?

17 A. Yes. I answered all the questions.

18 Q. And you were under oath at the time?

19 A. Yes.

20 Q. Do you recall being asked this question and giving
21 this answer?

22 Page 6, line 6.

23 *QUESTION: When did you start working at Luigi*
24 *Q's Italian restaurant?*

25 Line 8.

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 ANSWER: *I started working there in February of*
2 *2007.*

3 Do you recall that?

4 THE INTERPRETER: Counsel, may I see the
5 question and answer, please?

6 BY MR. NARDO:

7 Q. Were you asked that question and did you give that
8 answer?

9 A. Yes.

10 But I think I was mistaken when I gave the
11 answer, because I stopped working there in 2008.

12 Q. *Stopped*, did you say?

13 A. No. I said that I started working in 2008. That's
14 when I made a mistake when I gave the answer.

15 Q. And you were residing at 710 Jefferson Street, in
16 Westbury?

17 A. I was living there. Before, when I was working at
18 Luigi's, I lived there for a few days.

19 Q. A few days?

20 A. But -- yes. But earlier, when I started working at
21 Luigi's, I was living at -- wait, wait.

22 Q. Okay. How long have you resided at 710 Jefferson
23 Street, in Westbury?

24 A. No. I don't remember how long I lived there because
25 I am no longer living there.

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 Q. Okay. Your testimony was that on Monday through
2 Wednesday you worked up until 9 PM. Correct?

3 MR. HENNEFELD: Objection. Mischaracterizes the
4 testimony.

5 THE COURT: I will let him answer.

6 THE WITNESS: Between 9 and 10.

7 BY MR. NARDO:

8 Q. Okay. Did you testify that you never worked past
9 9 PM from Monday to Wednesday?

10 MR. HENNEFELD: Objection. Mischaracterizes his
11 testimony.

12 THE COURT: Overruled.

13 THE WITNESS: I did not.

14 BY MR. NARDO:

15 Q. Okay. And the chef, Pastor and Jeffrey, stopped
16 working before you. Correct?

17 A. Yes.

18 Q. You never had conversations with Luigi Quarta. Is
19 that correct?

20 A. Yes.

21 Q. And you had never complained to Luigi Quarta about
22 the wage you were receiving. Is that correct?

23 A. Yes.

24 Q. You never saw Luigi Quarta preparing food in the
25 kitchen at Luigi Q's. Correct?

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 A. He would cook but only for himself. When he wanted
2 to eat something, he would prepare it.

3 Q. If you can, open up that deposition to Page 11.

4 Do you recall being asked this question and
5 giving this answer at your deposition?

6 Page 11, line 16.

7 *QUESTION: Did you ever see Luigi Quarta*
8 *preparing food in the kitchen?*

9 Line 18.

10 *ANSWER: No.*

11 Do you recall being asked that question and
12 giving that answer at your deposition?

13 A. I don't remember anything from that, so I don't know.
14 But what I do know is that he would cook when he wanted to
15 have something.

16 Q. That is a different answer than you gave at the
17 deposition, isn't it?

18 A. Yes. But I'm being clear, you understand. I'm
19 saying he did cook, but he would cook after everyone left
20 when he wanted something for himself.

21 Q. Why didn't you say that at your deposition when I
22 asked the same question?

23 MR. HENNEFELD: Objection.

24 THE COURT: Sustained.

25 BY MR. NARDO:

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 Q. Pastor was in charge of the kitchen. Correct?

2 MR. HENNEFELD: Objection. Beyond the scope.

3 THE COURT: Overruled.

4 THE WITNESS: Yes.

5 BY MR. NARDO:

6 Q. And when you quit the restaurant, you told Pastor
7 that you were quitting. Correct?

8 A. I asked Pastor to tell Luigi that I was not working
9 there any more.

10 Q. And Pastor would assign work to you in to the
11 kitchen. Correct?

12 MR. HENNEFELD: Objection. Beyond the scope.

13 THE COURT: Overruled.

14 A. Pastor would receive the orders from the outside as
15 to what I was going to do inside the kitchen. Pastor
16 would receive the order from the boss, right?

17 BY MR. NARDO:

18 Q. Did Luigi Quarta speak Spanish?

19 A. No.

20 Q. Have you seen Luigi Quarta communicate with Pastor?

21 A. Sometimes he would call him inside.

22 Q. And if Luigi Quarta spoke with Pastor, they wouldn't
23 be speaking in Spanish. Correct?

24 MR. HENNEFELD: Objection. Calls for
25 speculation.

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 THE COURT: No.

2 If you observed them speaking to each other, you
3 can testify whether you saw them speaking in Spanish or
4 English.

5 THE WITNESS: Well, because Luigi did not speak
6 Spanish.

7 BY MR. NARDO:

8 Q. And what language did you observe Luigi Quarta
9 speaking to Pastor?

10 A. It would have had to have been in English because
11 Pastor speaks English.

12 Q. And Mr. Torres, you do not speak English. Correct?

13 A. Yes.

14 Q. And you don't read English.

15 A. No.

16 Q. And you don't read Spanish, also. Correct?

17 A. Correct.

18 Q. So if Mr. Quarta was speaking to Pastor, you don't
19 know, you couldn't interpret what they were talking about.
20 Correct?

21 A. That's correct.

22 Q. When Johnny Diaz, your cousin, recommended you for
23 employment at Luigi Q's, Johnny Diaz didn't complain about
24 any circumstances Luigi Q's, did he?

25 A. That's true.

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 Q. And you took the job.

2 A. Yes.

3 Q. And you have no idea how many hours you worked each
4 week at Luigi Q's. Correct?

5 A. Correct.

6 Q. How did it come about that you complained to the
7 Department of Labor?

8 MR. HENNEFELD: Objection. Mischaracterizes
9 testimony. Relevance. Informant's privilege.

10 MR. NARDO: Once he is on the witness stand, I
11 don't believe he has any informant's privilege anymore,
12 judge.

13 THE COURT: What is the relevance?

14 MR. NARDO: Well, I was just given a statement
15 by Mr. Hennefeld and I just want to ask about how the
16 statement came about.

17 THE COURT: What are you talking about?

18 MR. NARDO: When the informant gets on the
19 stand, the Department of Labor has given me a statement
20 from the informant that is signed by him.

21 THE COURT: Signed by the witness?

22 MR. NARDO: Yes.

23 THE COURT: Okay.

24 MR. NARDO: So I'm asking him how this statement
25 arose. It is obviously a statement he gave in the

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 presence of the Department of Labor.

2 MR. HENNEFELD: Your Honor, my objection is to
3 mischaracterizing this as a complaint by the witness.

4 What Counsel has is a statement from the witness
5 to the Department of Labor.

6 MR. NARDO: Maybe it's not signed by the
7 witness. Is that correct? Is that what we're -- no, it
8 says signed. It is signed.

9 MR. HENNEFELD: I object to the characterization
10 of it as a complaint. It is a statement.

11 MR. NARDO: I can call it a statement, judge.

12 THE COURT: I'm going to allow the question. Go
13 ahead.

14 BY MR. NARDO:

15 Q. Do you recall giving a statement in writing to the
16 Department of Labor?

17 A. A statement in writing?

18 Q. Yes. In Spanish.

19 A. Do you mean did I make a note or something?

20 Q. Let me withdraw it.

21 Do you recall he do you recall signing a
22 statement in Spanish after you were interviewed by someone
23 at the United States Department of Labor?

24 A. In Spanish, no.

25 Q. Do you recall signing any statement for the

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 Department of Labor?

2 A. Yes.

3 Q. And do you recall meeting with Zorayda Vasquez from
4 the Department of Labor?

5 MR. HENNEFELD: Objection. Relevance.

6 THE COURT: Overruled.

7 A. Yes.

8 BY MR. NARDO:

9 Q. How did it come about that you met with Ms. Vasquez
10 from the Department of Labor?

11 A. I don't remember how it happened, but the honest
12 truth is that I went there after a note came telling me to
13 come to the offices where I met and gave my statement to
14 her.

15 Q. Who gave you that note?

16 A. That paper came to my house on 7 Jefferson.

17 Q. Do you know who it was from?

18 A. Well, supposedly it was from Mr. Nardo, the attorney.

19 Q. Are you talking about your deposition?

20 A. What do you mean?

21 Q. Maybe I should show the witness this statement,
22 judge?

23 THE COURT: Okay. Does it have a Bates number
24 on it?

25 MR. NARDO: No.

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 This is in your exhibits, right?

2 MR. HENNEFELD: No.

3 MR. NARDO: No. And it is the only copy I have.
4 I just got it today, judge. So I guess I should have it
5 marked.

6 THE COURT: Yes. Mark it as Defense Exhibit K.

7 MS. GOLDSTEIN: I have another copy.

8 MR. NARDO: Thank you.

9 THE COURT: We will mark it as Defense
10 Exhibit K.

11 MR. NARDO: Thank you, judge.

12 BY MR. NARDO:

13 Q. I would like to show you what is marked as
14 Defendant's Exhibit K. If you could, take a look at the
15 second page of that.

16 A. But this is written in English?

17 Q. If you take a look at where it says *Statement*, almost
18 halfway down the page, and you see it is written in
19 Spanish?

20 A. The thing is, I cannot read this letter.

21 Interpreter correction.

22 I cannot read these kind of writing. I can only
23 read these kind of letters, but not these kind of letters.

24 Q. Do you see at the bottom right, does it have your
25 name?

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 A. Yes.

2 Q. Did you write your name there?

3 A. Yes.

4 Q. Do you recall meeting Ms. Vasquez in the parking lot
5 for the purpose of her taking a statement from you?

6 A. Yes.

7 Q. Was that on or around December 3 of 2008?

8 A. No. No. I don't remember the date.

9 Q. Did anyone tell you in advance that Ms. Vasquez would
10 be coming to the parking lot of Luigi Q's to talk to you?

11 MR. HENNEFELD: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: No.

14 BY MR. NARDO:

15 Q. When was the first time you met Ms. Vasquez?

16 A. I don't remember how long ago I met her. I don't
17 remember how long ago.

18 Q. Did you meet her before you signed this statement in
19 the parking lot?

20 A. I don't -- I remember that someone came to that
21 parking lot at that time but I don't remember if that was
22 her because I only saw her one time then. Later on I saw
23 her again in the office, in the office where he requested
24 me to go and make, and go and do that deposition in
25 Mineola.

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 Q. Do you know who Francis Marchan is?

2 A. Yes, I do.

3 Q. Did you ever see Mr. Marchan in the parking lot at
4 Luigi Q's?

5 A. I don't remember. The thing is, I do know him, but I
6 don't remember if he was there.

7 Q. And how do you know Mr. Marchan?

8 A. Well, after I was subpoenaed to go there to that
9 meeting that day in Mineola, that's when I got to know
10 Mr. Marchan.

11 Q. Did you ever discuss the case with Luigi Q's with any
12 other employees at Luigi Q's?

13 A. No.

14 Q. When was the first time you learned that the
15 Department of Labor was bringing a case against Luigi Q's
16 Italian Restaurant?

17 A. When I found out was when I was told to go and make a
18 statement at his office in Mineola.

19 Q. And that was in July of 2010. Correct?

20 A. I think so.

21 Q. But before that you had signed a statement for the
22 United States Department of Labor. Correct?

23 A. No.

24 Q. And if you look at that exhibit in front of you, I
25 think we said it is Exhibit K, isn't Exhibit K a statement

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 you signed and it's dated 12/3/08?

2 A. Honestly, I don't remember. Some questions were
3 asked of me but I don't know when it happened.

4 Q. Who asked those questions?

5 A. Well, it must have been Zorayda.

6 Q. Do you see the second page of Defendant's Exhibit K?
7 Do you see the date at the top right, December 3, 2008?

8 MR. HENNEFELD: Your Honor, the witness has
9 testified that he can't read English or Spanish.

10 THE COURT: I understand. I'm confused myself.
11 I want to hear the answer because I don't understand if he
12 signed there, if it was read to him or not read to him. I
13 don't understand what the circumstances were of this
14 paper.

15 Before he signed it, *these words or not these*
16 *words*: I'm confused as to what he is referring to. He
17 could read parts of it. He testified earlier he could not
18 read Spanish. And I thought I'd heard him say *I can read*
19 *these words but not these words*. So I'm not sure.

20 Did you read any of that statement before you
21 signed it?

22 THE WITNESS: No.

23 BY MR. NARDO:

24 Q. Do you recall signing this?

25 A. Well, yes, but -- well, this is my signature. I know

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 it is my signature.

2 Q. Do you see, at the top right, the number 12/3/08
3 where it says date?

4 You can point that out to him, if you like.

5 A. Yes, I'm looking at it.

6 Q. Does that refresh your memory as to when you signed
7 this?

8 A. Well, but if this is the date here, then that must be
9 the date that I signed it on.

10 Q. Did Ms. Vasquez tell you that you would be able to
11 receive money from Luigi Q's Italian Restaurant if you
12 were paid incorrectly?

13 A. No.

14 Q. Were you ever aware of the fact that you could
15 receive money from Luigi Q's Italian Restaurant if you
16 weren't paid correctly?

17 A. No.

18 Q. And why are you here testifying, Mr. Torres?

19 A. Because I was subpoenaed to come here and testify
20 about the time that I was working there and my schedule.

21 Q. Did you receive a check with that subpoena?

22 A. What do you mean?

23 Q. When you received that -- withdrawn.

24 When did you receive that subpoena?

25 A. The appointment to come here?

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 Q. Yes.

2 A. I don't remember what the date was. The note came to
3 me last week.

4 Q. Was there a check enclosed with that subpoena?

5 A. No.

6 Q. Before meeting with Ms. Vasquez in a parking lot, did
7 you ever give a statement to her by telephone?

8 A. No.

9 Q. All right. I will ask you to look at the fourth page
10 of Defendant's Exhibit K.

11 MR. HENNEFELD: Your Honor, clarification. The
12 document we have is only two pages. You said the forth
13 page. Counsel said the fourth page.

14 THE COURT: Is it a four-page document or a
15 two-page document?

16 MR. NARDO: Mr. Hennefeld gave me a two-page
17 document earlier, saying this is his statement.
18 Ms. Goldstein just gave me a four-page document.

19 The four-page document contains two statements
20 from Mr. Torres. One was by telephone. The document I
21 previously got from Mr. Hennefeld contained two
22 statements, two pages, and only had one statement.

23 THE COURT: So you are using this four-page
24 document that Ms. Goldstein gave you. Correct?

25 MR. NARDO: That's correct.

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 THE COURT: You are asking him to look at
2 Page 4.

3 MR. NARDO: Yes. Which I don't have a copy of
4 so I may have to approach.

5 THE COURT: Fine.

6 BY MR. NARDO:

7 Q. Okay. Do you see the date on that is 11/3/08? In
8 the top right?

9 A. Yes.

10 Q. And you see it mentions your name on it?

11 A. Yes.

12 Q. And do you see it says *by telephone* in the top right
13 of that document?

14 A. It says *telephone* here. Right?

15 Q. Yes. Does that refresh your recollection as to
16 whether or not you had a phone call to Ms. Vasquez, of the
17 Department of Labor, on November 3, 2008?

18 A. But I have not given any telephone statement.

19 Q. Okay.

20 Judge, I would like to move Defendant's Exhibit
21 K into evidence.

22 MR. HENNEFELD: Objection. That is hearsay, an
23 out-of-court statement. Hearsay by the witness which does
24 not meet any hearsay exception.

25 MR. NARDO: Judge, this is the first, the second

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 page, I believe, of this exhibit is his signed statement
2 given to the Department of Labor, so it would at least be
3 a business record taken by the Department of Labor. And
4 it was produced to us. And the same with the four pages.

5 I would like to admit the entire exhibit. If
6 not, I have further questions on it.

7 MR. HENNEFELD: A foundation for business record
8 exception has not been established.

9 THE COURT: Yes. I don't think you can get it
10 in as a business record. It could be a business record
11 with hearsay within the business record, so if there are
12 additional questions, you can question him additionally
13 with respect to it. But I don't think the whole document
14 should come in.

15 BY MR. NARDO:

16 Q. Do you recall -- I'm now referring to the second page
17 of Defendant's Exhibit K.

18 A. Is it this same one?

19 Q. Yes. Do you see where it says statement -- judge,
20 can I read it in Spanish?

21 THE COURT: Sure.

22 BY MR. NARDO:

23 Q. (Begins reading in Spanish.)

24 THE INTERPRETER: The Interpreter would like to
25 turn to the indicated page because the witness is still on

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 the fourth page.

2 MR. NARDO: I'm sorry. I apologize.

3 THE COURT: I don't want it to be read to him in
4 Spanish, but I'm going to ask that it be translated into
5 English so I know what you are reading to him. Okay?

6 MR. NARDO: Okay.

7 BY MR. NARDO:

8 Q. This is the page that has his signature at the
9 bottom. Correct?

10 A. Yes.

11 Q. Do you see where it says (reading in Spanish) *I work*
12 *from Monday through Saturday*?

13 A. Where?

14 Q. Where it says *Monday through Saturday*. Here.

15 A. Yes.

16 Q. And then do you see where it says (reading in
17 Spanish) *Monday, 10:30 AM to 10 PM? Monday?*

18 A. Yes.

19 Q. And then *for the next four days* (reading in Spanish)
20 it has quotation marks for the -- I'm sorry. Withdrawn.

21 And then for (reading in Spanish) *Tuesday,*
22 *Wednesday, Thursday 10:30 AM to 10 PM.*

23 Do you see where it says that?

24 A. Yes.

25 Q. And then it says Friday, 10:30 AM to 11 PM?

Torres - for the Plaintiff - Cross/Mr. Nardo

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1 A. Yes.

2 Q. And then it says Saturday, 3 PM till 11 PM?

3 A. Yes.

4 MR. NARDO: If I may approach to look at the
5 other statement, judge.

6 Q. And do you see, on the fourth page of Defendant's
7 Exhibit K, that the hours of work listed are different
8 than the hours on the second page of Defendant's Exhibit
9 K?

10 A. Yes.

11 Q. And your signature is on the second page of this
12 exhibit. Correct?

13 A. No.

14 Q. Okay. Your signature is not on that page you are
15 looking at now. Correct?

16 A. No, because that one, on the other one it was over
17 here and it's not here.

18 Q. And this is the fourth page of the exhibit, dated
19 November 10, 2008. Correct?

20 A. Yes. I can see that here, the date.

21 Q. And this fourth page, dated November 10, 2008,
22 actually indicates you were working more hours when you
23 compare it to the second page, dated December 3, 2008,
24 which is signed by you. Is that correct?

25 THE INTERPRETER: The second page, dated

1 December 3, 2008?

2 MR. NARDO. Right.

3 THE INTERPRETER: Thank you.

4 A. The schedule looks different.

5 MR. NARDO: All right. Judge, I have no further
6 questions.

7 THE COURT: Okay. Any redirect?

8 MR. HENNEFELD: One brief moment, your Honor,
9 please.

10 MR. NARDO: Judge, with everything that's going
11 on, you want me to leave this up?

12 THE COURT: Yes.

13 MR. HENNEFELD: No redirect, your Honor.

14 THE COURT: You can step down, sir. Thank you.
15 You're done.

16 THE INTERPRETER: Thank you.

17 (The witness was excused.)

18 THE COURT: We will take a break until 1:30.

19 (Lunch recess taken at 12:20 pm.)
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Pastor - for the Plaintiff - Direct/Ms. Goldstein

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A F T E R N O O N S E S S I O N

2:15 PM

THE COURT: Please call your next witness.

SANTOS ALFARO PASTOR

called by the plaintiff, having been first duly
sworn/affirmed, was examined and testified (through
the Spanish interpreters) as follows:

DIRECT EXAMINATION

BY MS. GOLDSTEIN:

Q. Good afternoon, Mr. Alfaro.

A. Good afternoon.

Q. What is your primary language?

A. Spanish.

Q. And do you understand any English?

A. Very little.

Q. There is an interpreter here to translate the
questions from Spanish into English and back again. So I
would just ask that if you are asked a question, even if
you understand some of it, to wait until the translation
is finished and to answer in Spanish.

A. Perfect.

Q. Why did you come to court today, Mr. Alfaro?

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 A. Because I received a letter saying that I had to come
2 to testify.

3 Q. Did you ever work at Luigi Q Restaurant?

4 A. Yes.

5 Q. When did you start working there?

6 A. That was in January of 2006.

7 Q. And do you still work there?

8 A. No.

9 Q. When did you stop working at the restaurant?

10 A. That was in July of 2010.

11 Q. What kind of work did you do at Luigi Q's Restaurant?

12 A. Cook.

13 Q. And did you do the same job the whole time you worked
14 at the restaurant?

15 A. Yes.

16 Q. How did you get the job at the restaurant?

17 A. That was through a friend. He was working there and
18 so he recommended me.

19 Q. Did anyone interview you before you started working
20 there?

21 A. Yes.

22 Q. Who interviewed you?

23 A. Mr. Luigi.

24 Q. And did Mr. Luigi tell you anything about the job
25 when you interviewed?

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 A. Yes. That he had a position available as a cook.

2 Q. And what if anything did Mr. Luigi tell you about the
3 pay that you would receive?

4 A. Well, at that moment he told me that he was able to
5 pay me the 750. That was an agreement that we reached.

6 Q. And that was \$750 a week? \$750 dollars a day?
7 Something else?

8 A. Oh, I'm sorry. A week.

9 Q. And what if anything did Mr. Quarta tell you about
10 the schedule that you would be working?

11 THE INTERPRETER: Mr. Farka?

12 MS. GOLDSTEIN: Mr. Quarta.

13 A. He told me that six days a week were worked. Because
14 when I first started there, he would close Mondays.

15 BY MS. GOLDSTEIN:

16 Q. What if anything -- I'm sorry. Just to clarify.

17 Do you know Mr. Luigi's last name?

18 A. Quarta.

19 Q. What if anything did Mr. Quarta tell you about the
20 time that you would start work?

21 A. Well, the starting time on weekdays was 10:30.

22 Q. Did he tell you the starting time of any other days?

23 A. Weekdays -- and that was Tuesday through Friday
24 because he was closed Mondays -- the start time was 10:30.

25 Q. What if anything did Mr. Quarta tell you about

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 overtime pay?

2 A. No. He never mentioned anything about overtime.

3 Q. During the entire time that you worked at the
4 restaurant, did Mr. Quarta tell you anything about
5 overtime pay?

6 MR. NARDO: Objection.

7 THE COURT: Overruled.

8 A. No. He never mentioned it.

9 BY MS. GOLDSTEIN:

10 Q. Who was your supervisor at the restaurant?

11 A. Mr. Luigi Quarta.

12 Q. And how did he supervise you?

13 A. One instance. If I am the cook and I submitted a
14 plate of food, he would always check it out to make sure
15 that the presentation was good.

16 Q. Did you work with other people in the kitchen?

17 A. Yes.

18 Q. Who supervised the other kitchen workers?

19 A. Mr. Luigi Quarta did.

20 Q. And how did Mr. Quarta supervise the other kitchen
21 workers?

22 A. One example, he would always check the time they
23 would come in and all of that. And depending, if they
24 were cleaning, he would make sure that everything was all
25 right.

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 Q. Did Mr. Quarta speak Spanish?

2 A. He does not speak Spanish. He says quite a few words
3 in Spanish; that's it.

4 Q. So how did Mr. Quarta communicate with the other
5 kitchen workers?

6 A. The truth is that I was the only one who understood a
7 little bit more of English, so he would tell me to tell
8 them what they have to do.

9 Q. How often was Mr. Quarta at the restaurant?

10 A. He's always there.

11 Q. Were there ever any days when Mr. Quarta was not at
12 the restaurant?

13 A. On two occasions he went on vacation. Yes, he did.

14 Q. Who was in charge of the restaurant when Mr. Quarta
15 was on vacation?

16 A. The first occasion when he left, Mr. Vinnie was in
17 charge.

18 Q. Who is Vinnie?

19 A. I'm sorry. Mr. Vinnie remained in charge. I'm
20 sorry.

21 Q. Who is Vinnie?

22 A. Vinnie is, how do you call it, he's the person who
23 takes down the orders. He's like the maître d'.

24 Q. Who was in charge the second time Mr. Quarta took
25 vacation?

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 A. A man by the name of Omar.

2 Q. And what was Omar's job?

3 A. The same job Vinnie had. He replaced him.

4 Q. Did Omar and Vinnie work the same schedule?

5 A. Yes.

6 Q. What time did the maître d' arrive in the morning?

7 A. 10:30.

8 Q. And did the maître d' leave before you or after you
9 at night?

10 A. After.

11 Q. Let's talk about your work schedule now.

12 At the time you stopped working at the
13 restaurant, what days of the week did you work?

14 A. Monday through Saturday.

15 Q. Let's talk about when your workday started, and we
16 will start with weekdays.

17 What time did you arrive to work Monday through
18 Friday?

19 A. 10:30.

20 Q. And did you always start at 10:30 in the morning on
21 weekdays?

22 A. Yes.

23 Q. Were you ever told to come into work later than 10:30
24 in the morning on a weekday?

25 A. Never.

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 Q. What time did you arrive to work on Saturdays?

2 A. At 3 o'clock.

3 Q. Did you always start at 3 o'clock on Saturdays?

4 A. Yes.

5 Q. Were you ever told to come in later than 3 o'clock on
6 a Saturday?

7 A. No.

8 Q. Let's talk about breaks during your workday.

9 On weekdays did you take any breaks during the
10 day?

11 A. Yes.

12 Q. What time did your break normally start?

13 A. At 3 o'clock in the afternoon.

14 Q. And what time did your break normally end?

15 A. At 4:30.

16 Q. Did you take any other breaks during the day on
17 weekdays?

18 A. No.

19 Q. Did you ever have to keep working past 3 pm on
20 weekdays?

21 A. On some occasions, yes, I did.

22 Q. What would happen on those occasions when you had to
23 work past 3 o'clock?

24 A. Well, I usually had to take my break after I served a
25 plate of food.

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 Q. And were there occasions when you had to serve plates
2 of food after 3 o'clock?

3 A. Yes, on some occasions.

4 Q. Approximately how many times in a normal week or a
5 normal month would you have to work past 3 o'clock?

6 A. Some, three times a month, more or less.

7 Q. Were you ever able to take a break before 3 o'clock
8 in the afternoon?

9 A. No.

10 Q. Was this your weekday break schedule the whole time
11 you worked at the restaurant?

12 A. Yes.

13 Q. On Saturday did you take any breaks during the day?

14 A. No. Usually you cannot take a break because you
15 start at 3 o'clock and there are a lot of things to
16 prepare.

17 Q. Let's talk about when your workdays ended at the
18 restaurant.

19 MR. NARDO: Judge, can I ask that counsel ask
20 questions and stop leading the witness by saying the
21 subject matter that counsel is going to question the
22 witness about?

23 THE COURT: I really think it is just to
24 introduce what topic she is going to cover next.

25 But to deal with the objection, just refrain

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 from informing the witness what area you are about to
2 address. Okay?

3 Ms. Goldstein: Yes, sir.

4 BY MS. GOLDSTEIN:

5 Q. On Mondays through Thursdays, did you stop working at
6 the same time or different time each night?

7 A. Usually, it would be at the same time.

8 Q. And what time did you usually stop working Monday
9 through Thursday?

10 A. At 9 o'clock sharp.

11 Q. Did you ever leave work before 9 o'clock, Monday
12 through Thursday?

13 A. No.

14 Q. Did you ever leave after 9 pm, Monday through
15 Thursday?

16 A. On some occasions, I did. For instance, usually I
17 would finish at 9, but if a customer arrives at, let's say
18 at ten till 9, then I would have to cook for that
19 customer.

20 Q. How often would it occur that you would have to stay
21 past 9 o'clock, Monday through Thursday?

22 A. On some occasions. Not very frequently. Let's say,
23 for instance, twice a month.

24 Q. How did you know you could stop working at the end of
25 each night?

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 A. Because Mr. Luigi Quarta told me about it: If there
2 is nothing to do, you can leave at 9 o'clock sharp.

3 Q. What time did you usually finish work on Friday?

4 A. Between 10 and 10:30.

5 Q. What times did you usually finish on Saturdays?

6 A. Also between 10 and 10:30.

7 Q. And why did you work later on Fridays and Saturdays?

8 A. Because that's usual at restaurants, when customers
9 would go out to eat late on weekends.

10 Q. And did you normally work this schedule the entire
11 time you worked at the restaurant?

12 A. Yes.

13 Q. At the beginning of your testimony, you mentioned
14 that your schedule was different when you were first
15 hired. Is that correct?

16 A. How so? Because when I first started working, he
17 would close Mondays. And then he changed and he would be
18 closed Sundays.

19 Q. Approximately how long did you work at the restaurant
20 when the restaurant was closed on Mondays?

21 A. For approximately seven months or so.

22 Q. And when you worked on Sunday, what time did you
23 arrive on Sunday?

24 A. At 2 o'clock.

25 Q. And what time did you leave on Sundays?

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 A. At 9 o'clock.

2 Q. And did you take a break on Sundays?

3 A. No.

4 Q. Other than the time period where you were working
5 Tuesday through Sunday, did your schedule ever change
6 again?

7 A. No. It was always the same schedule.

8 Q. Did you ever work a five-day-a-week schedule?

9 A. Never.

10 Q. When you first started, how were you paid? Cash or
11 check or both?

12 MR. NARDO: Objection.

13 THE COURT: What grounds?

14 MR. NARDO: Well, I think what we're here for is
15 the hours that the witness worked and that the employees
16 worked and whether or not they're owed overtime. How he's
17 paid -- he said the amount of money he earned, which I
18 believe is \$750 a week. Whether he received it in cash or
19 check is irrelevant to what your Honor has to find.

20 MS. GOLDSTEIN: Your Honor, this will go to the
21 accuracy of some of the payroll records that Ms. Vasquez
22 will be discussing later today or tomorrow.

23 THE COURT: What do you mean?

24 MS. GOLDSTEIN: We believe that Mr. Quarta, I'm
25 sorry, Mr. Alfaro will testify that he was paid a

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 combination of cash and check. The payroll records that
2 Ms. Vasquez will discuss will show that only the check
3 payments are, that we only have records of check payments
4 made.

5 MR. NARDO: Judge, we're going to object to
6 those records. And we believe that the inquiry here --
7 how many hours did they work, how much were they paid,
8 what's owed in overtime, how they're paid, in cash or
9 check or stamps or however they're paid -- is not part of
10 what your Honor has to find.

11 THE COURT: I do have to determine whether the
12 records are accurate or not, don't I?

13 MR. NARDO: What -- do you -- our position is
14 that you don't need those records.

15 THE COURT: That they have to prove, and how
16 they are trying to prove that goes to whatever records
17 they have or don't have with regard to that.

18 MR. NARDO: Those were just payroll records.
19 There are no records of the hours worked. We've
20 stipulated to that. So nothing you see in those records
21 is going to indicate the hours worked.

22 The basis of this claim is that they were not
23 paid time and a half for hours over 40 a week and maybe,
24 for some employees, that they weren't paid minimum wage.
25 So the payroll records are completely irrelevant to what

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 your Honor has to find.

2 THE COURT: That is tremendously relevant, the
3 payroll records --

4 MS. GOLDSTEIN: Your Honor, in addition to the
5 overt violation, the Secretary has also pled a
6 recordkeeping violation.

7 Under the Fair Labor Standards Act, the
8 defendants are required to keep records of other things;
9 among other things, money earned each day and each week.
10 The accuracy of defendant's records with respect to wages
11 paid is clearly relevant to that recordkeeping violation.

12 THE COURT: I'm going to allow it.

13 Okay. Go ahead.

14 (Question translated.)

15 A. At the beginning, he started paying me the 750 by
16 check. But it was a check from the business.

17 BY MS. GOLDSTEIN:

18 Q. And did the way that you were paid, by business
19 check, ever change?

20 A. He paid me with a business check for a certain period
21 of time, and then it changed and he paid me with a stub.

22 Q. What do you mean by a stub?

23 A. For instance, the first checks were only the business
24 checks. They had no stub. And then the checks came with
25 a stub.

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 Q. Did you ever receive any pay in addition to what you
2 received by check?

3 A. When he changed and he gave it to me that way, yes, I
4 would also get cash.

5 Q. And when you say when it changed, you mean when he
6 started paying you with a stub.

7 A. Um-hum. Right.

8 Q. When you received the pay stub, did the stub show all
9 of the money that you received in both cash and check?

10 A. No.

11 Q. What did the stub include?

12 A. Only what was paid to me by check.

13 Q. How much were you paid when you first started?

14 A. \$750 a week.

15 Q. And who paid you?

16 A. Mr. Luigi Quarta did.

17 Q. And when you were paid \$750 each week, did you
18 receive exactly \$750 each week, or did the amount vary
19 from week to week?

20 A. No, it never did. It was exactly 750.

21 Q. Did you ever get a raise?

22 A. Yes.

23 Q. When did you get a raise?

24 A. Approximately six months after I started.

25 Q. And after this raise, how much did you receive?

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 A. The raise was an additional \$100 per week.

2 Q. So at that time were you receiving exactly \$850 every
3 week?

4 A. Yes.

5 Q. Did you receive any further raises?

6 A. Yes. After that he would give me a \$50 raise every
7 six months until I earned \$1,000, which was the highest
8 salary I made there.

9 Q. When you were paid \$1,000, was that \$1,000 each week?

10 A. Yes.

11 Q. And during that time, did you receive exactly \$1,000
12 each week or did your pay vary each week?

13 A. No. Exactly \$1,000.

14 Q. Did you ever miss any days of work?

15 A. No.

16 Q. Were there any weeks in which the restaurant was
17 closed?

18 A. He would always close up one week out of the year.

19 Q. And would you be paid for that week?

20 A. Out of all the time that he closed up, just one week,
21 he paid me the first year.

22 Q. How did you travel to the restaurant at the start of
23 each workday?

24 MR. NARDO: Objection.

25 THE COURT: What is the objection?

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 MR. NARDO: Relevance.

2 MS. GOLDSTEIN: Your Honor, defendants have
3 indicated in the past that they will contend that the
4 manager drove some of them home in the evening and that
5 their working hours were not what the individuals claim;
6 therefore, we will include evidence as to how employees
7 brought themselves to and from the workplace.

8 THE COURT: Okay. I will allow it.

9 THE INTERPRETER: Can the question be repeated
10 for me, please?

11 THE COURT: Sure.

12 BY MS. GOLDSTEIN:

13 Q. How did you travel to the restaurant at the start of
14 each workday?

15 A. In my car.

16 Q. And who unlocked the restaurant each workday?

17 A. To start out with, it was Vinnie. Later on, Omar.

18 Q. And did you have keys to open the restaurant,
19 Mr. Alfaro?

20 A. No.

21 Q. What did you do when you arrived in the morning?

22 A. To prepare everything that, for example, if they
23 needed more salad or meat or fish, get it ready. That was
24 my job.

25 Q. And when you returned from your break at 4:30 pm on

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 weekdays, what did you do then?

2 A. Well, for example, if we had to make more sauce or
3 meat or fish or chicken, that was my job; that's what I
4 did. Or clean up or something.

5 Q. Who decided what hours you should work?

6 A. Luigi Quarta.

7 Q. Could you set your own hours at the restaurant?

8 A. No.

9 Q. What kind of items was it your job to cook?

10 A. Sauces. There were some kinds that only I knew how
11 to make. Fish, meat, chicken. And to make the special,
12 because I would make the daily special.

13 Q. Other than cooking, what else did you do at the
14 restaurant?

15 A. Cleaning up. And if there was something out of
16 order, to straighten up.

17 Q. If you were getting low on something, like chicken,
18 for example, what would you do?

19 MR. NARDO: Objection. Leading.

20 THE COURT: Overruled.

21 A. If we needed something, then what I would do would be
22 to make up a list and give it to Luigi because he was the
23 one who was supervising and he would call all the
24 companies to get it.

25 Q. Did you order any products, yourself?

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 A. No.

2 Q. Who decides whether a worker gets hired at the
3 restaurant?

4 A. Luigi Quarta.

5 Q. Have you ever hired a worker at the restaurant?

6 A. No.

7 Q. Have you ever recommended that Mr. Quarta hire a
8 certain person?

9 A. No.

10 Q. Has anyone ever told you that you had the authority
11 to hire workers at the restaurant?

12 A. No.

13 Q. Who decides how much employees are paid at the
14 restaurant?

15 A. Mr. Luigi Quarta.

16 Q. How do you know that?

17 A. Because he was always the one who would interview
18 them and tell them how much they were going to be paid.

19 Q. Did you personally see Mr. Quarta interviewing
20 employees?

21 A. On some occasions, I have.

22 Q. Did you ever decide how much an employee should be
23 paid?

24 A. No.

25 Q. Who decides what hours the kitchen workers should

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 work?

2 A. Mr. Luigi Quarta.

3 Q. Did you decide what hours the men in the kitchen
4 should work?

5 A. No.

6 Q. Did you ever tell another worker to come in later
7 than 10:30 am on a weekday?

8 A. No.

9 Q. Do you know what time each of the other workers in
10 the kitchen went home in the evening?

11 A. No, because I was the first one to leave and they
12 would stay there.

13 Q. Who decided when those workers could go home?

14 A. That was supposed to be Mr. Luigi Quarta.

15 Q. Who can fire the kitchen workers?

16 A. Mr. Luigi Quarta.

17 Q. Did you ever fire a kitchen worker?

18 A. No.

19 Q. Did you ever ask Luigi to fire someone?

20 A. No.

21 Q. Was anyone fired during the time that you were
22 working at the restaurant?

23 A. Yes.

24 Q. Who was fired?

25 A. A guy named Juan Carlos.

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 Q. And how was Juan Carlos fired?

2 A. Mr. Quarta told me to tell him that he didn't need
3 him there anymore, so I had to call him.

4 Q. And why did you have to call him?

5 A. Because Mr. Quarta does not speak Spanish and the guy
6 did not speak English.

7 Q. Was it in any way your decision to fire Juan Carlos?

8 A. No.

9 Q. How many other people worked in the kitchen with you
10 at one time?

11 A. Three others besides me.

12 Q. And what were the three other jobs in the kitchen?

13 A. There was another guy, who would make pasta. And
14 another one, who would make salads. And then there was
15 the dishwasher.

16 Q. What time did the other workers arrive Monday through
17 Friday?

18 A. The same time. Everybody was there at 10:30.

19 Q. And what time did the other workers arrive on
20 Saturdays?

21 A. 3 o'clock.

22 Q. And did the other workers take the same or a
23 different break as you took?

24 A. The same.

25 Q. And did you leave before, after, or at the same time

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 as the other kitchen workers?

2 MR. NARDO: Objection.

3 THE COURT: Sustained as to that.

4 BY MS. GOLDSTEIN:

5 Q. Did you ever work with someone named Johnny at the
6 restaurant?

7 THE INTERPRETER: I'm sorry?

8 MS. GOLDSTEIN: Johnny.

9 A. Yes.

10 BY MS. GOLDSTEIN:

11 Q. What was Johnny's job?

12 A. Washing dishes.

13 Q. Approximately how long did Johnny work at the
14 restaurant?

15 A. I can't tell you exactly, but more or less from two
16 to three months.

17 Q. When you stopped working at the restaurant, was
18 Johnny still working there?

19 A. No. He had left there.

20 Q. About how long before you stopped working at the
21 restaurant did Johnny stop working there?

22 A. I can't remember really well, but it was more or less
23 about two years before I left. I continued on for about
24 two years.

25 Q. Did you ever work with someone named Horacio at the

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 restaurant?

2 A. Yes.

3 Q. What was Horacio's job?

4 A. He made salads.

5 Q. And approximately how long did Horacio work at the
6 restaurant?

7 A. About eight or nine months, more or less.

8 Q. Was Horacio working at the restaurant when you
9 stopped working there?

10 A. No.

11 Q. About how long before you stopped working at the
12 restaurant did Horacio stop working at the restaurant?

13 A. Approximately ten months to a year, around that time.

14 Q. Did you ever work with someone named Alexander
15 Zanbrano-Banegas at the restaurant?

16 A. Yes.

17 Q. What was Alex's job?

18 A. He was what they call the busboy or sometimes he
19 would carry out the food, too.

20 Q. Was Alex working at the restaurant when you stopped
21 working there?

22 A. Yes. My understanding is, he is still there.

23 Q. And do you recall when Alex started working at the
24 restaurant?

25 A. Yes, I do.

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 Q. When did Alex start working at the restaurant?

2 A. Approximately seven to eight months after I began
3 working there.

4 Q. What time did Alex normally arrive in the morning?

5 A. 10:30.

6 Q. And what time did Alex normally arrive on Saturdays?

7 MR. NARDO: Objection.

8 THE COURT: I think we have been through this
9 already.

10 MS. GOLDSTEIN: I don't think we've been through
11 this with the busboy, your Honor. We have been through
12 this with the other kitchen employees.

13 THE COURT: I will let him answer it.

14 Go ahead.

15 A. 3 o'clock.

16 BY MS. GOLDSTEIN:

17 Q. And did Alex take the same break as you during the
18 weekdays or was his break different?

19 A. It was totally different because, for example, if
20 there were no customers in the dining room, then he could
21 take a break. But if there were customers in the dining
22 room, then he could not take a break.

23 Q. Did Alex ever take a longer break than 3 to 4:30?

24 A. No. If he took his breaks, it was at the same time.

25 Q. Did Alex finish working at the restaurant at the end

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 of the day before you or after you?

2 A. After.

3 Q. Did you ever work with somebody named Jeffrey Chavez
4 at the restaurant?

5 A. Yes.

6 Q. What was Jeffrey's job?

7 A. He was the pasta man. He would make the pasta.

8 Q. Was Jeffrey working at the restaurant when you
9 stopped working there?

10 A. Yes.

11 Q. And was Jeffrey working at the restaurant when you
12 started working there?

13 A. Yes.

14 Q. And did Jeffrey work the same schedule as you or was
15 it different?

16 A. We would start at the same time, but he would leave
17 later on weekdays.

18 Q. What time did Mr. Quarta usually arrive at the
19 restaurant?

20 A. He did not have a schedule, but he would normally
21 arrive between 10:30 and 12.

22 Q. And what time did Mr. Quarta normally arrive on
23 Saturdays?

24 A. I don't know exactly when he would get there, but we
25 would find him there already when we started.

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 Q. Would Mr. Quarta leave before you or after you at the
2 end of the day?

3 A. During all the time that I was there, he left
4 beforehand on a few occasions.

5 Q. How did Mr. Quarta keep track of the hours that you
6 worked?

7 MR. NARDO: Objection.

8 THE COURT: Sustained as to form.

9 BY MS. GOLDSTEIN:

10 Q. Did Mr. Quarta keep track of the hours that you
11 worked?

12 MR. NARDO: Same objection.

13 THE COURT: Based upon your own conversations
14 with him or your personal observations, do you know if he
15 kept records of your hours?

16 THE WITNESS: I don't know if he kept track of
17 my hours.

18 BY MS. GOLDSTEIN:

19 Q. Did you ever punch a time card when you worked at the
20 restaurant?

21 A. No.

22 Q. Did you ever see anyone punch a time card at the
23 restaurant?

24 A. No.

25 Q. Can I ask the witness to open the binder to Exhibit

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 7, please.

2 Do you recognize what is shown on this page?

3 A. Yes.

4 Q. What is this?

5 A. I recall a schedule that he had on the wall in his
6 office that was just like this one.

7 Q. And is this that schedule that you saw hanging on the
8 wall?

9 A. Yes.

10 Q. Is this a photograph of that schedule?

11 A. Yes.

12 Q. When did you see this schedule hanging in the office?

13 A. Approximately four to five months before I left
14 there.

15 Q. And does this photograph accurately show what the
16 schedule hanging in Mr. Quarta's office looked like?

17 A. Yes.

18 Q. Who took this photograph?

19 A. I did.

20 Q. And where were you when you took this photograph?

21 A. I was going to the men's room and it is right next
22 door to the door to the office. The door was open and I
23 saw the schedule there.

24 Q. What did you use to take this photograph?

25 A. A smartphone.

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 MS. GOLDSTEIN: I move to admit Exhibit 7 into
2 evidence, your Honor.

3 THE COURT: Any objections?

4 MR. NARDO: Yes, judge. I would object to it.

5 I don't know if the witness said when he took
6 the photograph, but it is barely legible. You can't even
7 read, at least on my copy I can't even read, anything
8 below -- I can just read Anibal. Anything below that is
9 very difficult to read.

10 THE COURT: Well, can he say approximately when
11 he took the photograph?

12 BY MS. GOLDSTEIN:

13 Q. Approximately when did you take this photograph,
14 Mr. Alfaro?

15 A. About four months before I left. More or less four
16 months.

17 MS. GOLDSTEIN: With respect to the
18 illegibility, your Honor, it is what it is. I believe
19 that some of it is sufficiently legible as to be of use.

20 THE COURT: Yes. I think, certainly as relates
21 to Mr. Pastor, it is legible. It does get harder to see
22 as I go down the page.

23 I will admit it. I can't read certain portions
24 of it, especially as it relates to this witness.

25 So Plaintiff's Exhibit 7 is admitted.

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 (Plaintiff's Exhibit 7 in evidence.)

2 BY MS. GOLDSTEIN:

3 Q. Mr. Pastor, does this schedule -- did this Exhibit 7
4 accurately describe your schedule?

5 A. No.

6 Q. Can you explain why not.

7 A. Well, for example, here I'm seeing that I had Sundays
8 and Mondays off, which is not true.

9 Here I see another schedule, that says 11 to 2.
10 Here it says 12 to 2. That's a lie.

11 Q. Does this schedule accurately describe the schedule
12 of the other workers?

13 MR. NARDO: Objection.

14 THE COURT: Overruled.

15 A. No.

16 BY MS. GOLDSTEIN:

17 Q. Why not?

18 A. Well, here, for example, it says that Jeffrey had
19 every Sunday and Tuesday off, something that's not true.
20 He always had Sundays off, just like the rest of us. And
21 that was the only day.

22 Q. Now, if you were not looking at Exhibit 7 -- and
23 maybe I can ask you to close that up for a moment.

24 Mr. Pastor, can you recall the exact details of
25 this schedule that was hanging in that office?

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 A. No.

2 Q. Can I ask you to please open to Exhibit 7A.

3 Do you recognize this?

4 A. Yes.

5 Q. What is this?

6 A. This is from the photograph I took.

7 Q. What do you mean that it is from the photograph that
8 you took?

9 A. This is from the schedule that was on the wall. But
10 since I used the telephone, I enlarged all the images and
11 I wrote them down.

12 Q. Is all of that handwriting on this page your
13 handwriting?

14 A. Yes.

15 Q. Why did you write this document?

16 A. Because it -- you can't see everything completely in
17 the image of the phone, so I zoomed in on each name and
18 schedule.

19 Q. When did you write Exhibit 7A?

20 A. One week after I took the photo, more or less.

21 Q. And does Exhibit 7A accurately record the information
22 that was hanging on Mr. Quarta's wall?

23 A. Yes. That's exactly what was on there.

24 MS. GOLDSTEIN: Your Honor, I would move to
25 admit Exhibit 7A as a past-recollection recorded.

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 MR. NARDO: No objection, judge.

2 THE COURT: Okay. 7A is admitted.

3 (Plaintiff's Exhibit 7A in evidence.)

4 BY MS. GOLDSTEIN:

5 Q. Mr. Alfaro, does Exhibit 7A accurately describe the
6 schedules of the kitchen workers at the restaurant?

7 MR. NARDO: Objection.

8 THE COURT: Again, is it based upon your own
9 personal observation of their hours?

10 THE WITNESS: No.

11 BY MS. GOLDSTEIN:

12 Q. During the time that you worked at the restaurant,
13 did any of the employees have two days off during the
14 week?

15 MR. NARDO: Objection.

16 THE COURT: What grounds?

17 MR. NARDO: This was asked and answered, judge.
18 And if 7A is the same as 7, then we have to ask the same
19 questions for 7A as we did with 7.

20 THE COURT: I think she is now covering more
21 employees. I think we spoke about Jeffrey, himself, and
22 she is asking about the remainder of the employees.

23 I will allow this question, but I believe we
24 probably need to move on.

25 MS. GOLDSTEIN: Yes, sir.

Pastor - for the Plaintiff - Direct/Ms. Goldstein

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1 THE INTERPRETER: Can this question be repeated
2 for the interpreter, please?

3 THE COURT: Did any of the employees listed on
4 this page have two days off at any time during the time he
5 was employed there?

6 A. No.

7 BY MS. GOLDSTEIN:

8 Q. During the time that you worked at the restaurant,
9 did Mr. Quarta ever discuss the investigators from the
10 Department of Labor with you?

11 MR. NARDO: Objection.

12 THE COURT: What grounds?

13 MR. NARDO: Relevance.

14 THE COURT: Issue of willfulness. I assume he's
15 going to testify to conversations with the investigators?

16 MS. GOLDSTEIN: Yes, your Honor.

17 THE COURT: I will allow it.

18 A. I believe that one time I believe he had received a
19 letter about the investigation, saying that the
20 investigators were coming. And he told us to say that we
21 started later, that we came in at 2 o'clock, which wasn't
22 true, and that we had two days off.

23 BY MS. GOLDSTEIN:

24 Q. And who did you mean by *he*?

25 A. Oh. I'm sorry. Mr. Quarta.

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 Q. When did this conversation happen?

2 A. Approximately a year after they began to investigate
3 him.

4 Q. And who do you mean by they, Mr. Alfaro?

5 A. Ms. Vasquez.

6 Q. Where did this conversation take place?

7 A. He went into the kitchen to say that.

8 Q. And who was present during that conversation?

9 A. All the people in the kitchen. There were four of
10 us.

11 MS. GOLDSTEIN: I have no further questions,
12 your Honor.

13 THE COURT: Why don't we take our afternoon
14 break before the cross-examination.

15 (Recess taken from 3:15 pm until 3:20 pm.)

16

17 CROSS-EXAMINATION

18 BY MR. NARDO:

19 Q. Have we met before, Mr. Pastor?

20 We have met before, correct?

21 A. It seems to me I saw you, I've seen you, once.

22 Q. Okay. Aside from yourself, how many employees were
23 working in the kitchen?

24 A. Three.

25 Q. And one was the salad chef. Correct?

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 A. Yes, there was a salad man.

2 Q. And there was also a pasta man?

3 A. Yes.

4 Q. And there was a dishwasher?

5 A. Yes.

6 Q. And could you assign those employees tasks to
7 perform?

8 A. By order of Mr. Luigi Quarta, yes, I could.

9 Q. Well, Mr. Quarta spent most of his time outside the
10 kitchen when customers were there. Is that right?

11 A. That's the case. But he would always step into the
12 kitchen to speak with me and tell me what had to be done.

13 Q. Weren't you in charge in the kitchen when it came to
14 the three employees we just discussed?

15 A. I was the person who translated Mr. Luigi's orders to
16 them.

17 Q. Mr. Pastor, if you needed something to perform your
18 duties in the kitchen, maybe a special knife or a cutting
19 board or a plate, could you direct the kitchen employee to
20 get that for you?

21 MS. GOLDSTEIN: Objection, your Honor.
22 Speculation.

23 THE COURT: I don't think he is asking him to
24 speculate.

25 When that type of thing happened, what would you

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 do?

2 THE WITNESS: I would draw up a list of the
3 things that were needed, I would give it to Mr. Luigi, and
4 he was in charge of calling up all the companies.

5 BY MR. NARDO:

6 Q. Let's suppose you were cutting something and the
7 knife broke. Did that ever happen?

8 A. No.

9 Q. Let's suppose you needed something that was available
10 but wasn't within your reach, like a knife or a cutting
11 board or something like that. Could you ask another
12 employee in the kitchen to bring that to you?

13 A. Usually that never happened because it's a small
14 place and everything is handy for us.

15 Q. Mr. Pastor, did you ever give any direction to one of
16 the other employees in the kitchen to do something for you
17 to help you perform your duties as chef?

18 A. As a chef I was the person -- you mean, as a chef I
19 was the person who had the most experience in the kitchen.

20 Now, for instance, on a weekend, let's say
21 Friday or a Saturday, and those are the busiest days,
22 let's say if I was very busy and let's say I needed a
23 piece of meat that was hidden somewhere in the storeroom,
24 I would tell the dishwasher, yes, bring it to me.

25 Q. And aside from having the most experience in the

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 kitchen, you had the most authority in the kitchen.

2 Correct?

3 A. Not authority.

4 Q. Okay. Did the dishwasher ever tell you to do
5 something for him?

6 A. No.

7 Q. You know who Alex Torres is. Is that correct?

8 A. Yes.

9 Q. You spoke with him today. Correct?

10 A. No, we have not spoken.

11 Q. Okay. If Alex Torres testified that you were in
12 charge in the kitchen, would that be correct?

13 MS. GOLDSTEIN: Objection, your Honor.

14 Mischaracterizes --

15 THE COURT: First of all, whether it
16 mischaracterizes or not, it is an improper question, To
17 tell one witness what another witness said.

18 Each witness testifies independently. And I
19 judge their credibility. You don't.

20 It's an improper question.

21 MR. NARDO: Okay.

22 BY MR. NARDO:

23 Q. Were you in charge in the kitchen?

24 A. No.

25 Q. Did you have the authority to direct the pasta chef

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 what to do?

2 MS. GOLDSTEIN: Objection. Asked and answered.

3 THE COURT: I'll allow it one more time.

4 A. Well, I was the person who had the most experience in
5 the kitchen. But for instance, if he was letting
6 something get burned in the kitchen, then I had to correct
7 him.

8 BY MR. NARDO:

9 Q. And would you do the same with the salad chef?

10 A. Yes. I would do it by order of Mr. Luigi because he
11 would always tell me to make sure that the salad was
12 nicely decorated because he was always checking on the
13 food plates, making sure that they were served properly.

14 Q. And sometimes you would check on those food plates to
15 make sure they were proper?

16 A. For instance, this is an example and this hardly ever
17 happened, this is an example and I repeat. If the pasta
18 man was letting something get burned, then I would tell
19 him that that could not be so because Mr. Luigi would tell
20 me that such a thing could not be served.

21 Q. Do you recall the first time you spoke with
22 Ms. Vasquez over the phone?

23 A. I do not exactly remember the date, but I did speak
24 with her.

25 Q. Did you speak with her in the summer of 2008?

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 A. I did not remember whether it was in 2008.

2 Q. Did you tell her at any time that you were in charge
3 of the kitchen?

4 A. No.

5 Q. Did you tell her that you worked approximately 55
6 hours a week?

7 A. I have not said that.

8 Q. I'd like to show you what has been marked as
9 Defendant's Exhibit L, and I ask you to turn to the third
10 page of that exhibit.

11 Can you read English, Mr. Pastor?

12 A. No.

13 Q. Can you read where it says Statement and then it says
14 (*in charge of kitchen and chef*) in parentheses?

15 MS. GOLDSTEIN: Objection, your Honor. He just
16 testified he can't read English.

17 THE COURT: Do you want to have the interpreter
18 translate that for him?

19 MR. NARDO: Yes.

20 (Interpreter translating document.)

21 A. As I was saying, I was the person with the most
22 experience. And since the other people did not speak
23 English, I was the only person who translated, in my
24 limited English, the orders that Mr. Quarta gave them.

25 BY MR. NARDO:

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 Q. You have been a chef at other restaurants, haven't
2 you?

3 MS. GOLDSTEIN: Objection, your Honor.

4 THE COURT: Relevance?

5 MR. NARDO: I would like to know, in the
6 industry, if it is typical that the head chef is in charge
7 of the kitchen.

8 THE COURT: No. I'll sustain the objection.
9 What is typical in the industry doesn't help me at all.
10 It's what happened at this particular place.

11 MR. NARDO: Okay.

12 BY MR. NARDO:

13 Q. Do you see below that where it says *55 HRS WK*?

14 INTERPRETER: Would you like me to interpret
15 that in English?

16 MR. NARDO: Yes. Sure.

17 A. That I worked?

18 BY MR. NARDO:

19 Q. Do you know if that 55 hours a week indicates that is
20 what you worked?

21 A. I never said that I worked 55 hours, because I got a
22 salary and that was per week.

23 Q. And do you see at the bottom, the second-to-last
24 line, where it says 54.5?

25 Do you see that number?

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 A. I do.

2 Q. Do you know if that represents the number of hours
3 you worked in a week for Luigi Q's?

4 A. I was telling you I work per shift, not by the hour.
5 That is --

6 Q. Okay. So you don't know how many hours you worked
7 per week. Correct?

8 A. I never counted it. The fact is, I never counted it.
9 But you do approximately 60 hours, more or less, you don't
10 have to run the figure.

11 Q. And before right now, you have never calculated that.

12 A. No. I never ran the figures.

13 Q. And your testimony was that you never took a vacation
14 when you worked there?

15 MS. GOLDSTEIN: Objection.

16 MR. NARDO: I will withdraw that.

17 BY MR. NARDO:

18 Q. Did you ever take a vacation during the time you
19 worked there?

20 A. When he closed for a week. And he closes for a week
21 each year.

22 Q. Did you ever call in sick or not report to work
23 because of illness or injury when you worked there?

24 A. I never, never let him down. I never missed work.

25 Q. Did you ever complain to Luigi Quarta about how you

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 were being paid?

2 A. No, I never complained because I needed the job and I
3 never bothered him about any rate.

4 Q. And you never kept track in writing of the hours you
5 worked at Luigi Q's, did you?

6 A. Not in writing.

7 Q. When you received the letter to testify in this case,
8 did you also receive a check with that?

9 A. No. Just the letter.

10 Q. And did you meet with anyone to discuss your
11 testimony today from the Department of Labor?

12 A. We met sometimes.

13 Q. Who did you meet with?

14 A. With Ms. Vasquez.

15 Q. How many times did you meet with her to prepare your
16 testimony for today?

17 MS. GOLDSTEIN: Objection.

18 THE COURT: Overruled.

19 A. About two. Two or three times.

20 BY MR. NARDO:

21 Q. And when were those times? In the last week? Or the
22 last month?

23 A. That happened last year when a court appearance was
24 going to take place here and subsequently was canceled.

25 Q. Did Mr. Vasquez -- withdrawn.

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 Did Ms. Vasquez ever tell you that you can get
2 an award of money for this case?

3 A. No.

4 Q. Are you of the opinion that Luigi Quarta's restaurant
5 owes you money?

6 A. Because of the overtime, I do believe that he owes
7 me.

8 Q. And you learned that from the Department of Labor.
9 Correct?

10 A. I know that myself, that when you work over 40 hours,
11 you are supposed to get paid overtime.

12 Q. How come you never complained to Luigi Quarta about
13 that?

14 MS. GOLDSTEIN: Objection. Asked and answered.

15 THE COURT: I will allow that.

16 A. I did not complain because I have to work and I have
17 many responsibilities to pay.

18 BY MR. NARDO:

19 Q. What kitchen employees were hired during the time you
20 worked at Luigi Qs?

21 A. I am not able to remember, but the ones that changed
22 the most there were the dishwashers.

23 Q. Who was the last dishwasher that worked there when
24 you were still working there?

25 A. The last one, and it is my understanding that he is

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 still there, is Anibal Acosta.

2 Q. Who was the dishwasher before then?

3 A. Before, I do not exactly know, but I think it was
4 Alex Torres.

5 Q. Did Mr. Torres come to you and have a discussion with
6 you before he started working at Luigi Q's?

7 A. No.

8 Q. So you just showed up and one day Mr. Torres was
9 there working as a dishwasher?

10 A. No. I had already been working there when he came to
11 work there.

12 Q. Before Mr. Torres' first day at work, did he have a
13 conversation with you about the job?

14 MS. GOLDSTEIN: Objection.

15 THE COURT: Overruled.

16 A. The day before, no. I don't remember if it was the
17 day before, but I do believe that he came. I don't
18 remember really well when, but he had come in the day
19 before that because his friend had referred him for the
20 job.

21 BY MR. NARDO:

22 Q. And this friend was Johnny Diaz. Correct?

23 A. Supposedly. I don't know whether they're friends or
24 acquaintances.

25 Q. And did Mr. Torres tell you that Johnny Diaz referred

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 him, Mr. Torres, for the job?

2 A. The one who was there first, it was Johnny. And then
3 Johnny left and he said that he would like to leave him
4 the job.

5 Q. And Johnny told that to you?

6 A. It was said to me and then I passed word on to
7 Mr. Luigi Quarta, because he was the only one who did the
8 interviews and decided how much they were going to be
9 paid.

10 Q. Luigi Quarta does speak Spanish. Correct?

11 A. He doesn't. He says a few words.

12 Q. And Alex Torres doesn't speak English. Correct?

13 A. Exactly.

14 Q. So do we agree that Luigi Quarta did not interview
15 Alex Torres for the job since they don't share a common
16 language?

17 A. Well, I don't believe they need that much English for
18 that. If they are told *I'm going to pay you this much*,
19 it's really not necessary to understand a lot of English.
20 You know, *I'll pay you this much*. And you don't really
21 need to have a long interview for a dishwasher.

22 Q. Were you present for any interview between
23 Luigi Quarta and Alex Torres?

24 A. I don't remember. I don't believe so, no.

25 Q. During the workday you would leave before Mr. Torres.

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 Correct?

2 A. I would always leave at 9 or 10, and the dishwashers
3 were the last to go.

4 Q. Did Ms. Vasquez ever come to the restaurant to speak
5 to you and then tell you not to tell Luigi Quarta that she
6 was at the restaurant?

7 MS. GOLDSTEIN: Objection. Compound.

8 THE COURT: Overruled.

9 A. Not that I recall.

10 BY MR. NARDO:

11 Q. If you could, open up to Exhibit 7 --

12 MR. NARDO: Judge, can I ask questions from
13 here?

14 BY MR. NARDO:

15 Q. -- you testified that Exhibit 7A was your manual
16 copying of the schedule which is the picture in Exhibit 7.
17 Correct?

18 A. It's the same; that is to say, it is the same
19 schedule. The only difference is, I made it clearer than
20 in the photograph which isn't very clear.

21 Q. But do you see on Exhibit 7, it has the words *THIS*
22 *WEEK* in capitals and underlined at the top?

23 Do you see that?

24 A. Yes, I do.

25 Q. It doesn't have that on 7A, does it?

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 A. I forgot to write down those same letters.

2 Q. So this exhibit that you took a picture of which --
3 withdrawn.

4 This schedule that you took a picture of, which
5 is here as Exhibit 7, was only a schedule for one week.
6 Isn't that correct?

7 A. Supposedly so. It says one week. But it doesn't
8 have any date on it, either.

9 Q. And you took that picture. And who did you send that
10 picture to?

11 A. I let Ms. Vasquez know about it.

12 Q. Did you send her the actual picture?

13 A. I texted it to her.

14 Q. And that was while -- withdrawn.

15 When you took that picture, you were working for
16 Luigi Q's. Correct?

17 A. Yes.

18 Q. And when you texted it to her, you were working for
19 Luigi Q's.

20 A. Yes.

21 Q. Were you upset with Luigi Q's at the time?

22 A. Upset? No.

23 Q. Did you tell Mr. Quarta that you were sending that
24 picture to Ms. Vasquez?

25 A. No.

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 Q. Did Ms. Vasquez ask you to take that picture?

2 A. No.

3 Q. How did you have her email address or her phone
4 number?

5 A. I knew her phone number.

6 Q. How did you know that?

7 A. Because that's very easy. A friend of mine got it
8 for me.

9 Q. Who was that? What friend?

10 A. Jeffrey.

11 Q. Is that Jeffrey Chavez?

12 A. I don't remember Jeffrey's last name. He was
13 Jeffrey, the pasta man.

14 Q. Was there a difference between the amount --
15 withdrawn.

16 Did you receive a W-2 at the end of the year
17 from Luigi Quarta?

18 MS. GOLDSTEIN: Objection, your Honor. The
19 court has already granted a motion in limine precluding
20 discussions about Luigi's tax filings.

21 MR. NARDO: They brought it out on direct,
22 judge.

23 THE COURT: About a W-2?

24 MR. NARDO: They brought up the fact that he
25 receives payment in cash and payment by check and their

Pastor - for the Plaintiff - Cross/Mr. Nardo

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1 argument is that some of the cash payments aren't
2 reflected in the records.

3 MS. GOLDSTEIN: No, your Honor, we asked no
4 questions concerning past records that Mr. Alfaro had or
5 filed. We asked only whether the records that -- the pay
6 stubs that he received each week included all of the pay
7 that he received.

8 THE COURT: I don't think they opened the door
9 on this and I don't think it is proper for you to ask any
10 questions regarding W-2s. I'm barring it.

11 MR. NARDO: All right. I have nothing further.

12 THE COURT: Any redirect?

13 MS. GOLDSTEIN: No, your Honor.

14 THE COURT: You can step down, sir. Thank you.
15 (The witness was excused.)

16 THE COURT: Next witness.

17 MR. NARDO: Judge, I think you see the tenor of
18 the case, and what is happening under Rule 403 includes
19 cumulative testimony, so I don't know how much of this
20 your Honor wants to go through.

21 We would like to go through as little as
22 possible, for the defendant. I don't know about the
23 plaintiff. I don't know if you want to issue an order
24 along those lines.

25 MS. GOLDSTEIN: Your Honor, to the extent that

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 the defendant is interested in sitting down with me and
2 stipulating as to the schedules of the workers and so
3 forth, I am happy to do that.

4 I think that it is far from mature to issue an
5 order for cumulative testimony only to avoid testifying.

6 THE COURT: Yes. I'm all for streamlining this
7 case, believe me. But I agree with Ms. Goldstein.

8 To the extent you want to streamline this case,
9 I would suggest -- since we're going to go for another 20
10 minutes today and we will end about 4:30 -- if you are
11 willing to stipulate about schedules and hours of the two
12 employees, I think that would streamline things. But
13 assuming that you are disputing that, I don't see how you
14 can make that application.

15 MR. NARDO: Okay. Thank you.

16 THE COURT: Okay.

17

18 **JOSE ANIBAL ACOSTA**

19 called by the plaintiff, having been first duly
20 sworn/affirmed, was examined and testified (through
21 the Spanish interpreters) as follows:

22

23 **DIRECT EXAMINATION**

24 **BY MS. GOLDSTEIN:**

25 Q. Good afternoon, Mr. Acosta.

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 A. Good afternoon.

2 Q. What is your primary language, Mr. Acosta?

3 A. Spanish.

4 Q. Do you speak any English?

5 A. No.

6 Q. There is an interpreter here to translate the
7 questions from English to Spanish and back again, so I
8 would ask that, even if you understand any of the words in
9 English, that you just wait until she is finished
10 translating. Okay?

11 A. Yes.

12 Q. Why did you come to court today?

13 A. Because I was sent a form saying to come.

14 Q. Did you ever work at Luigi Q's Restaurant?

15 A. Yes.

16 Q. When did you start working there?

17 A. September 20, 2009.

18 Q. Do you still work there?

19 A. Yes.

20 Q. What kind of work do you do at the restaurant?

21 A. Washing dishes.

22 Q. And have you been a dishwasher the whole time you
23 have been there?

24 A. Yes.

25 Q. How did you get the job at the restaurant?

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 A. Juan Carlos called me and told me the job was there.

2 Q. Who is Juan Carlos?

3 A. Juan Carlos is one of the workers who works there in
4 the kitchen.

5 Q. What is his job in the kitchen?

6 A. His job is making pasta and salad man. He does both
7 jobs.

8 Q. Who hired you to work at the restaurant?

9 A. Luigi.

10 Q. When you started were you told anything about minimum
11 wage?

12 A. No.

13 Q. Were you told anything about overtime when you were
14 hired?

15 A. No.

16 Q. Were you told anything about overtime pay from any
17 supervisor at the restaurant?

18 A. No.

19 Q. What days of the week do you work at the restaurant?

20 A. Mondays through Saturdays.

21 Q. Have you always worked those days?

22 A. Yes.

23 Q. Monday through Friday what time do you start working
24 at the restaurant?

25 A. From Monday through Thursday, at 10:30. From Monday

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 through Friday, at 10:30.

2 Q. Do you always arrive at the exact same time Monday
3 through Friday or does it vary?

4 A. No, the same time.

5 Q. Have you ever been told to come in later than
6 10:30 am on a weekday?

7 A. No.

8 Q. On Saturdays what time do you start work at the
9 restaurant?

10 A. 3 o'clock.

11 Q. And do you always arrive exactly at 3 or does it vary
12 from week to week?

13 A. No. Always at 3.

14 Q. Have you ever been told to come in after 3 pm on a
15 Saturday?

16 A. No.

17 Q. Monday through Friday do you take any breaks during
18 your day?

19 A. Just the one at 3 o'clock. I don't know what the
20 question is about, if that's it.

21 Q. Do you usually take a break at 3 o'clock during the
22 week?

23 A. Yes. One hour, an hour and a half.

24 Q. What time does that break usually start?

25 MR. NARDO: Objection. The question before this

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 was: *Do you usually take a break at 3 o'clock during the*
2 *week?*

3 Now we have: *What time does that break start?*

4 MS. GOLDSTEIN: Your Honor, the answer was that
5 it varies. I'm just trying to nail this down.

6 THE COURT: Go ahead.

7 A. What time do I start -- what was the question?

8 BY MS. GOLDSTEIN:

9 Q. What time does your break usually start?

10 A. Normally there is no set time to go out and start the
11 break. Sometimes we get off at 3:30, sometimes 3:20,
12 depending on how busy it is. There is no definite time to
13 leave for break.

14 Q. Approximately how many times during the week does
15 your break start after 3 pm?

16 A. After? What do you mean?

17 Q. How many times during the week does your break start
18 later than 3 o'clock?

19 A. It depends. Two to three days. Depending. Two to
20 three. It depends how the week goes.

21 Q. Does your break ever start before 3 o'clock?

22 A. No.

23 Q. What time does your break end?

24 A. 4:30.

25 Q. Do you ever take a break that ends later than 4:30?

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 A. No.

2 Q. Other than the break that you have just described, do
3 you take any other breaks Monday through Friday?

4 A. No.

5 Q. On Saturdays do you take any breaks during the day?

6 A. Just to eat, for about 10 minutes.

7 Q. At night do you leave at the exact same time every
8 day?

9 A. No.

10 Q. Why do you finish later on some days?

11 A. Well, sometimes it's more busy and all of the dishes
12 have to be washed because Luigi does not like you to leave
13 any dishes dirty. That's why everything has to be
14 cleaned.

15 Q. What time do you usually finish work on Mondays?

16 A. Usually 9:30, 9:20, depending upon whether or not it
17 is busy. Or if it is busy, sometimes at 10. It depends.

18 You never will really know if it is going to be
19 busy or if it is going to be slow.

20 Q. And is your departure time the same Tuesday through
21 Thursday?

22 A. Yes.

23 Q. What time do you usually leave on Fridays?

24 A. Well, according to him, he says at 10. But sometimes
25 we leave at 10:30 and sometimes we even leave at 11:30.

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 Q. What do you mean by *according to him*?

2 A. Well, when I started working, he told me that
3 10 o'clock was the time to go home.

4 Q. And who do you mean by *he*?

5 A. Luigi.

6 Q. Do you ever leave before 10:30 pm on Fridays?

7 A. Very few times I've left at 10:20.

8 Q. Do you ever leave after 10:30 on Friday?

9 A. Yes.

10 Q. What time do you finish work on Saturdays?

11 A. Same as on Fridays.

12 Q. Do you talk to anyone before you leave the restaurant
13 at night?

14 A. No.

15 Q. Did your schedule ever change during the time you
16 have worked at the restaurant?

17 A. No.

18 Q. How are you paid? Cash? Check? Or both?

19 A. Cash.

20 Q. Who pays you?

21 A. Luigi gives my envelope to the chef, and he gives it
22 to me.

23 Q. Are you given any receipt or paper with your pay?

24 A. No.

25 Q. How much were you paid when you first started working

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 at the restaurant?

2 A. The same thing I'm getting now: \$400 a week.

3 Q. And do you receive exactly \$400 every week, or does
4 your pay vary a bit from week to week?

5 A. No, the same.

6 Q. Were you paid for your first week of work?

7 A. No.

8 Q. Why not?

9 A. Because Luigi told us that we had to be paid a week
10 later; that is, we would start working and get paid for
11 that week two weeks later.

12 Q. Have you ever missed any days of work, Mr. Acosta?

13 A. No.

14 Q. While you've worked at the restaurant, has the
15 restaurant ever closed for a week?

16 A. Yes.

17 Q. Can you explain.

18 A. It will always close for a week when Luigi would go
19 on vacation.

20 Q. And during the week when the restaurant was closed,
21 were you paid for that week?

22 A. No.

23 Q. How do you travel to the restaurant?

24 A. By bicycle.

25 Q. Who normally unlocks the restaurant each workday?

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 A. Right now?

2 Q. Yes. Right now.

3 A. Luigi.

4 Q. When did Luigi start unlocking the restaurant in the
5 morning?

6 A. When Omar left.

7 Q. Who was Omar?

8 A. Omar was someone who worked with us. He was the
9 manager inside. That is what we called him.

10 Q. When did Omar stop working at the restaurant?

11 A. I don't remember the date when he stopped working
12 there, but it has been about two months or three months.

13 Q. During the time that Omar worked at the restaurant,
14 who unlocked the restaurant each morning?

15 A. Omar.

16 Q. Have you ever seen anyone else unlock the restaurant?

17 A. No.

18 Q. What do you do when you arrive at the very beginning
19 of each workday?

20 A. The very first thing that I do is the bathroom. I
21 clean the bathrooms. I wash the floor. I clean the bar,
22 the mirrors, everything.

23 Q. When you started working at the restaurant, how many
24 other people worked in the kitchen with you at one time?

25 A. There were four in the kitchen.

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 Q. And can you list those four jobs for us.

2 A. Well, the four is with me. Right.

3 Q. Okay. So in addition to you being the dishwasher,
4 can you list the other jobs in the kitchen?

5 A. Yes. The person who was there was Juan Carlos,
6 Jeffrey, Pastor.

7 Q. Did Juan Carlos work the same or different schedule
8 as you?

9 A. The same. We all started together in the morning.

10 Q. And did Juan Carlos leave at the same time as you in
11 the evening?

12 A. No. Sometimes. He always used to leave about 20
13 minutes earlier.

14 Q. You just testified that someone named Jeffrey worked
15 with you in the kitchen. Correct?

16 A. Yes.

17 Q. What was Jeffrey's job?

18 A. He made the pasta.

19 Q. And did Jeffrey work the same schedule as you or a
20 different schedule?

21 A. They always worked, since they were in the kitchen,
22 they worked different times, and one of them used to leave
23 a little early.

24 Q. Has there been a pasta chef working in the kitchen
25 the whole time you have been at the restaurant?

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 A. Yes.

2 Q. What is the current -- is there currently a chef
3 working in the kitchen?

4 A. Yes.

5 Q. And what is the chef's name?

6 A. Enrique.

7 Q. And does Enrique work the same schedule as you or a
8 different schedule?

9 A. No, he always works a different schedule since he's
10 the chef.

11 Q. And when you say a different schedule, can you
12 explain to the court what you mean.

13 A. Yes, because he starts at 11 and I start at 10:30.

14 Q. And does this chef leave at the same time as you in
15 the evening?

16 A. No, he leaves first.

17 Q. Prior to Enrique working with you, did the chef
18 always start at 11 o'clock in the morning rather than
19 10:30?

20 A. No. The one who was there when I first got there
21 would start at 10:30.

22 Q. So other than Enrique, do all the kitchen workers,
23 during the time you've worked at the restaurant, start on
24 weekdays at 10:30 in the morning?

25 MR. NARDO: Objection. Leading.

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 THE COURT: Overruled.

2 THE INTERPRETER: I am sorry. May the
3 interpreter have the last question read back, please.

4 (Last question read back by court reporter.)

5 A. Yes.

6 BY MS. GOLDSTEIN:

7 Q. When did Enrique start work at the restaurant?

8 A. I do not remember, but it's been about a year, for
9 about a year already.

10 Q. Who was the chef before Enrique?

11 A. Well, when I first got there, there was Pastor and
12 there have been three all together. There was a guy named
13 Jorge there. Then Rico started working there, filling in
14 for him.

15 Q. How long did Jorge work as a chef in the restaurant?

16 A. For about six months.

17 Q. And when you say Rico, is that the same person as
18 Enrique?

19 A. Yes. Enrique.

20 Q. Is there a busboy that works at the restaurant?

21 A. Yes.

22 Q. What is the name of the busboy that currently works
23 there?

24 A. Alex Zanbrano.

25 Q. And has Mr. Zanbrano been the busboy the whole time

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 you have worked at the restaurant?

2 A. Yes.

3 Q. What time does Mr. Zanbrano arrive in the morning?

4 Is it the same time as you or a different time?

5 A. At the same time.

6 Q. And does Alex Zanbrano take the same or a different
7 break as you?

8 A. He takes a different one.

9 Q. Can you explain how Mr. Zambrano's break is different
10 than yours.

11 A. It varies because when we leave, then the chef cooks
12 the food for us. And we have the food and he stays behind
13 making coffee for the clients or something.

14 The fact is that I don't know what time he goes
15 for his breaks, but he always stays behind doing
16 something.

17 Q. So is it fair to say that Mr. Zanbrano has a shorter
18 break than you do?

19 A. Yes.

20 Q. At nighttime does Mr. Zanbrano leave before you,
21 after you, or at the same time?

22 A. Well, when I leave, he always stays behind. I don't
23 know what time.

24 Q. Earlier you mentioned working with someone named
25 Jeffrey. Is that right?

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1 A. Yes.

2 Q. Was Jeffrey working at the restaurant when you
3 started working there?

4 A. Yes.

5 Q. Approximately how long did Jeffrey work at the
6 restaurant with you?

7 A. I don't remember how long, but he worked for
8 approximately a year or so.

9 Q. Did Jeffrey work the same schedule as you or was it
10 different?

11 A. It was different because starting time was always the
12 same for all, but as far as the departure time, he would
13 always leave 10 or 20 minutes early.

14 Q. Now, a few minutes ago you testified about working
15 with someone named Pastor. Correct?

16 A. Yes.

17 Q. What was Pastor's job?

18 A. Pastor was in charge of preparing the meats,
19 everything that a chef does.

20 Q. And how much of his time did Pastor spend preparing
21 and cooking food?

22 A. Well, I couldn't tell you the time because when I
23 would see him, he would be doing one thing or the other.
24 But when I looked at him, he was always there working.

25 Q. When you say he was working, do you mean he was

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 cooking?

2 A. He was cooking or preparing some meat or preparing a
3 sauce. He would always be there doing something.

4 Q. Did you meet Pastor for the first time before or
5 after Luigi hired you?

6 A. No. He was already there when I started.

7 Q. Mr. Quarta hired you. Correct?

8 A. Yes.

9 Q. Did you meet Pastor before you were hired?

10 A. No.

11 Q. Other than the 3 to 4:30 break, did Pastor ever leave
12 the restaurant during the day?

13 A. No.

14 Q. Did he have keys to the restaurant?

15 MR. NARDO: Objection.

16 THE COURT: Overruled.

17 A. No.

18 BY MS. GOLDSTEIN:

19 Q. Did you ever see Pastor hire a worker?

20 A. No.

21 Q. Did you ever see Pastor fire a worker?

22 A. No.

23 Q. Could Pastor change your work schedule?

24 A. No.

25 Q. Could Pastor discipline a kitchen worker?

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1 MR. NARDO: Objection.

2 THE COURT: Sustained.

3 BY MS. GOLDSTEIN:

4 Q. Did you ever see Pastor discipline a kitchen worker?

5 A. What do you mean by that? I don't know or I don't
6 understand very well.

7 Q. Did you ever see Pastor suspend a worker or send
8 someone home early?

9 A. No.

10 Q. Who was your boss at the restaurant?

11 A. Luigi has always been the boss.

12 Q. And how often is Luigi at the restaurant?

13 A. He's there every day, the whole day.

14 Q. Are there ever times that Luigi is not at the
15 restaurant?

16 A. No. He's always there.

17 Q. Who at the restaurant can hire workers?

18 A. Luigi.

19 Q. And who at the restaurant can fire workers?

20 A. Luigi.

21 Q. Who trained you when you first started?

22 A. Juan Carlos.

23 Q. Have you ever punched a time card at the restaurant?

24 A. No.

25 Q. Have you ever seen time cards at the restaurant?

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1 A. Yes.

2 Q. Where have you seen time cards at the restaurant?

3 A. At the office.

4 Q. Have you ever seen anyone at the restaurant punching
5 a time card?

6 A. Yes.

7 Q. Who have you seen punching the time cards?

8 A. Omar. When Omar was in.

9 Q. Has anyone from the restaurant ever said anything to
10 you about time cards?

11 A. What do you mean?

12 Q. Has anyone ever asked you to punch a time card?

13 A. Oh, that I should punch it in myself? No.

14 Q. Did Omar ever say anything to you about the
15 Department of Labor?

16 MR. NARDO: Objection.

17 THE COURT: Sustained.

18 BY MS. GOLDSTEIN:

19 Q. What if anything has anyone at the restaurant told
20 you about the Department of Labor?

21 MR. NARDO: Same objection.

22 THE COURT: I don't know what the purpose of
23 this is.

24 MS. GOLDSTEIN: Your Honor, 801(d)(2) material.
25 These are admissions by the employer.

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1 Mr. Acosta has testified that Omar was a
2 manager. These are statements made within the scope of
3 his employment concerning --

4 THE COURT: That wasn't your question. Your
5 question was, did anybody at the restaurant ever. Right?
6 Wasn't that your question?

7 MS. GOLDSTEIN: My question was initially did
8 Omar say anything to him about the Department of Labor.
9 And that objection was sustained, so I tried to make it
10 less leading.

11 So I think that with this witness, to the extent
12 that I can narrow things down, I think it will move a lot
13 faster.

14 I think the question *did Omar say anything to*
15 *him about the Department of Labor* is permissible under
16 Rule 801(d)(2).

17 MR. NARDO: Judge, if it's an admission made by
18 an employer, that's the admission made in the course and
19 scope of employment. Discussions about the Department of
20 Labor are not discussions in the course and the scope of
21 employment under Rule 801.

22 MS. GOLDSTEIN: To the extent -- I'll make an
23 offer of proof where we can do this conditionally.

24 It's my belief that Mr. Acosta will testify that
25 Omar advised him to say certain things relating to his

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1 schedule and hours of work, which is clearly within the
2 scope of his employment.

3 MR. NARDO: Judge, that should have occurred
4 outside of the earshot of the witness.

5 THE COURT: First of all, I don't think he
6 understands English. So I'm going to admit it on that
7 exception to the hearsay rule. I think it falls within
8 the exception that it is within the scope of employment,
9 during the existence of the employment relationship
10 obviously, right?

11 MS. GOLDSTEIN: Yes, your Honor.

12 THE COURT: It does fall under 801(d)(2)(D).

13 BY MS. GOLDSTEIN:

14 Q. Did Omar ever say anything to you about the
15 Department of Labor?

16 A. Yes.

17 Q. What did Omar say to you?

18 A. That I only worked 40 hours and that I only worked
19 for five days.

20 Q. Did Omar say anything else to you during this
21 conversation?

22 A. No.

23 Q. When did Omar say this to you?

24 A. When I had recently started at the job there.

25 Q. And where were you when Omar said this to you?

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1 A. There in the kitchen.

2 Q. Was anyone else present?

3 A. No.

4 Q. Now, prior to this week did Mr. Quarta ever say
5 anything to you about this lawsuit?

6 A. Yes.

7 Q. What did Mr. Quarta tell you about this lawsuit prior
8 to this week?

9 A. Oh. He discussed with me whether I was coming here.
10 I told him yes, I did. And then he told me, then there's
11 no more work for you, only till Saturday and that's it.

12 Q. When did that conversation happen?

13 A. On Thursday.

14 Q. Prior to Thursday, back in the fall, did Luigi ever
15 say anything to you about this lawsuit?

16 A. Yes.

17 Q. What did he say to you back in the fall?

18 A. That if I got called to come here to court, to say
19 that I was fine, that he was paying me all right, and that
20 I was doing okay there.

21 Q. Where were you when that conversation happened?

22 A. Inside, in the saloon.

23 Q. In the restaurant?

24 A. Yes.

25 Q. In what language did Mr. Quarta speak when he told

Acosta - for the Plaintiff - Direct/Ms. Goldstein

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1 you this?

2 A. In his language. Omar was the one who interpreted it
3 for me.

4 Q. Now let's talk about what's happened in the last few
5 days.

6 You just testified about a conversation that you
7 had with Mr. Quarta on Thursday. Is that correct?

8 A. Yes.

9 Q. What happened after that conversation with
10 Mr. Quarta?

11 A. Well, he didn't tell me anything else again. The
12 only person was Alex, who would tell me Luigi was telling
13 him to tell me not to come here.

14 Q. When Luigi told you that you wouldn't --

15 MS. GOLDSTEIN: I apologize, your Honor. I
16 realize this is asked and answered, but can I just ask the
17 witness to recount that conversation so I can use those
18 words?

19 THE COURT: Yes.

20 BY MS. GOLDSTEIN:

21 Q. Can you tell the court one more time what Mr. Quarta
22 told you on Thursday.

23 A. He asked me whether I was going to come here, and I
24 told him yes.

25 And then he said, then as of Saturday I won't

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1 give you any more work.

2 Q. Where were you when this conversation took place?

3 A. In the kitchen, right there by the place where I wash
4 the dishes.

5 Q. In what language did Mr. Quarta tell you that he
6 won't give you any more work?

7 A. In Spanish.

8 Q. Did anyone translate for Mr. Quarta, either right
9 then or soon thereafter?

10 A. Yes.

11 Q. What happened?

12 A. Well, the other guy, Enrique, told me that until
13 Saturday, that after that, I wouldn't have any more work.
14 And that was it.

15 Q. And when Enrique told you that after Saturday you
16 wouldn't have any more work, did he mention Luigi Quarta
17 at all?

18 MR. NARDO: Objection. Leading.

19 THE COURT: Overruled.

20 A. No. He only told me. He says you don't have any
21 more work.

22 BY MS. GOLDSTEIN:

23 Q. Do you know who Enrique meant by *he*?

24 MR. NARDO: Objection.

25 A. Luigi.

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1 MR. NARDO: Objection.

2 A. Because he was there.

3 THE COURT: Overruled.

4 Luigi was standing there during the
5 conversation?

6 THE WITNESS: Yes.

7 BY MS. GOLDSTEIN:

8 Q. How did you feel after that conversation?

9 MR. NARDO: Objection.

10 THE COURT: Sustained as to form.

11 BY MS. GOLDSTEIN:

12 Q. Did anyone else speak to you on Thursday about
13 testifying?

14 A. No.

15 Q. After Thursday, on Friday or Saturday, did anyone
16 else at the restaurant speak to you about your testimony?

17 A. Yes.

18 Q. Can you explain to the court what happened.

19 A. Well, Alex said to me not to come because Luigi had
20 told him that if I didn't come here, I would continue
21 working for him. Otherwise, he would look for other
22 workers.

23 Q. And what time of the day was this conversation on
24 Friday?

25 A. The whole day long, from starting at 10:30 until we

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1 closed, every now and then.

2 Q. Did anyone speak to you on Saturday about your
3 testimony here today?

4 A. The same thing Alex Zanbrano told me Friday he also
5 told me on Saturday.

6 Q. And on Saturday did Alex Zanbrano again reference
7 Luigi Quarta?

8 MR. NARDO: Objection. Leading.

9 THE COURT: Overruled.

10 A. Yes.

11 BY MS. GOLDSTEIN:

12 Q. Can you describe to the court your reaction after
13 being told that you wouldn't have work on Saturday if you
14 came to testify today.

15 MR. NARDO: Objection.

16 THE COURT: He asked you that? I don't
17 understand. What did he say to that?

18 MS. GOLDSTEIN: What did he say to that?

19 THE COURT: I will allow it. Yes.

20 BY MS. GOLDSTEIN:

21 Q. Did you say anything to Mr. Quarta or Alex or Enrique
22 when they told you that you wouldn't have work after
23 Saturday?

24 A. No, I didn't say anything.

25 Q. Did you feel pressure not to testify today?

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1 MR. NARDO: Objection.

2 MS. GOLDSTEIN: Your Honor, this is relevant,
3 particularly to the extent that we are able to amend that
4 15(a)(3) violation.

5 MR. NARDO: He's testified to what was said.
6 Did you feel pressure --

7 MS. GOLDSTEIN: The actual witness intimidation
8 is probative, the defendant's --

9 THE COURT: I'll allow it.

10 THE INTERPRETER: Can the question be repeated
11 for the interpreter, please?

12 MS. GOLDSTEIN: Certainly.

13 BY MS. GOLDSTEIN:

14 Q. Did you feel pressure not to testify here today?

15 A. Yes. When he told me that you won't have a job
16 anymore if you do, then I kind of felt afraid, like, as
17 you might say, but I still came here anyway.

18 MS. GOLDSTEIN: Thank you, Mr. Acosta. Nothing
19 further.

20 THE COURT: We are going to break for the day.
21 Let me ask you to come back tomorrow morning at 9:30 to
22 finish your testimony.

23 MS. GOLDSTEIN: Your Honor, the remaining
24 witness, Mr. Acosta and the last witness, are current
25 employees. We would just ask that defendants be ordered

1 to produce them, as well, or allow them to be released
2 from work tomorrow.

3 THE COURT: You may.

4 Do you --

5 MR. NARDO: I'm sorry. Who are they?

6 MS. GOLDSTEIN: Mr. Acosta and Juan Carlos
7 Chevez.

8 MR. NARDO: And that's it? Those are your last
9 witnesses?

10 MS. GOLDSTEIN: One employee and the
11 investigator. Yes.

12 MR. NARDO: Okay. Great. I'll talk to my
13 client. I don't anticipate a problem with that, judge.

14 I have some housekeeping things, but I guess we
15 can do that in the morning before --

16 THE COURT: Yes. You can step down.

17 THE WITNESS: Thank you.

18 (The witness was excused.)

19 THE COURT: Go ahead.

20 MR. NARDO: Do you want to go over the
21 housekeeping things?

22 THE COURT: Sure.

23 MR. NARDO: I've looked at the Quarta deposition
24 and the Banegas depositions, so I have a few comments. We
25 can go over that tomorrow about objections to a particular

1 page in there, and there are very few. I assume that you
2 do not want us to read the deposition transcripts into the
3 record, right?

4 THE COURT: I will review it on my own time.

5 MR. NARDO: You got it.

6 And I subpoenaed a witness for tomorrow,
7 Mr. Gluszek, so I may need to take him out of order
8 because he's a CPA and it's a very busy time of year for
9 him.

10 THE COURT: Fine.

11 MR. NARDO: And I guess we can remove the Torres
12 deposition transcripts from both sets of binders, since he
13 testified today. Exhibit 14 of plaintiff's.

14 THE COURT: The only exhibits independent of
15 what you gave me in the binder, unless it's offered, it's
16 not in evidence.

17 MR. NARDO: Okay. Okay. Great.

18 THE COURT: Unless it's going to be offered and
19 not an exhibit. Whether it's in the binder or not doesn't
20 mean anything.

21 MR. NARDO: Excellent. Thank you, judge.

22 THE COURT: Does the Department have anything?

23 MS. GOLDSTEIN: No, your Honor.

24 THE COURT: How many more witnesses?

25 MS. GOLDSTEIN: We have one more employee

1 witness and then the testimony of our investigator, your
2 Honor.

3 THE COURT: Okay. Then how many witnesses did
4 you expect?

5 MR. NARDO: I'm not sure, your Honor. There may
6 be two.

7 THE COURT: Okay. I will see you tomorrow
8 morning at 9:30.

9 MR. NARDO: Thank you.

10 (Proceedings adjourned at 5:10 pm.)
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